

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14th October, 2011

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W.P.(C) 7485/2011

VAIDYA JAGJIT SINGH

..... Petitioner

Through: Ms. Kamini Jaiswal with Mr.
Divyish Pratap Singh & Ms.
Suchitra Pandey, Advs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Sumeet Pushkarna & Mr.
Jitendra Kumar, Advs. for R-1.
Mr. Rakesh Upadhyay & Mr. T.K.
Joseph, Advs. for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to the reporter or not? | Yes. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

RAJIV SAHAI ENDLAW, J.

1. The petitioner claims to have been elected as the member, from the State of Punjab, of the Central Council of Indian Medicine (CCIM) constituted under Section 3 of the Indian Medicine Central Council Act,

1970, in the elections held in the year 2010-11 pursuant to the directions of the Supreme Court. This petition has been filed with the grievance that though a meeting of the CCIM is scheduled from 17th to 19th October, 2011 and invitation thereof has been issued to all the other members so elected, no invitation has been extended to the petitioner. A writ restraining the respondents from preventing the petitioner from participating in the meeting / activities of the CCIM is sought.

2. The counsel for the respondent No.2 CCIM, appearing on advance notice, has handed over in the Court an affidavit of objections along with Annexures which is taken on record.

3. The counsel for the respondent No.2 CCIM does not controvert that the petitioner has been so elected in the elections held in 2010-11. He however invites attention to page 96 of the paper book, being the copy of a letter dated 05.01.2006 (stated to be infact of 05.01.2009) of the respondent No.2 CCIM addressed to the petitioner. It is contended that the petitioner was a member of the Central Council in existence prior to the elections in 2010-11 also and had so remained a member for 17 years; that during the said earlier tenure, after appropriate inquiry, he was found guilty

of having misappropriated a sum of ₹4,24,885/-; that vide the said letter dated 05.01.2009 he was asked to pay the said amount together with interest, amounting to ₹7,14,835 as on 05.01.2009 and was informed that unless he paid the same, he would not be allowed to participate in the activities of the CCIM.

4. The counsel for the respondent No.2 CCIM contends that the petitioner has not paid the said amount till now and is hence not entitled to participate in the meetings and activities of the respondent No.2 CCIM.

5. It has been enquired from the counsel for the respondent No.2 CCIM as to under which provision of the Act or law has the respondent No.2 CCIM exercised the power to so prohibit / prevent an elected member, as the petitioner is, from participation in the affairs of respondent No.2 CCIM.

6. The counsel for the respondent No.2 CCIM has fairly stated that there is no such provision. He however invites attention to Section 10 which empowers the respondent No.2 CCIM to constitute from amongst its members “such other committees for general or special purposes, as the Central Council deems necessary to carry out the purposes of this Act”.

He contends, that a Committee to look into the charges of misappropriation against the petitioner was constituted under the said provision and has rendered a finding against the petitioner; the petitioner has not challenged the said finding; and thus the petitioner without paying the amounts found to be so due from him is not entitled to participate in the meeting of the respondent No.2 CCIM. It is contended that the petitioner, instead of challenging the substantial order (of being guilty of misappropriation) is challenging the order in implementation thereof and which is not permissible. It is further contended that the said monies are public monies and a person who has misappropriated public monies ought not to be entitled to participate in the meetings of the respondent No.2 CCIM or to any relief in this writ petition.

7. Needless to state that the counsel for the petitioner controverts that the petitioner has indulged in any such misappropriation or that any monies are due from him. She further points out that an FIR has been lodged by the respondent No.2 CCIM against the petitioner.

8. The question entailed in the petition being purely legal i.e. whether in the absence of any provision permitting the respondent No.2 CCIM to

so debar an elected member, an elected member can be so debarred or not, with the consent of the counsels for the parties, the matter has been finally heard.

9. Section 7 of the Act deals with “Term of office of President, Vice-President and members of Central Council”. Sub-Section (2) thereof provides that an elected or nominated member shall be deemed to have vacated his seat if, i) he is absent without excuse, sufficient in the opinion of the Central Council, from three consecutive ordinary meetings of the Central Council; or, ii) in the case of a member elected under Section 3(1)(a), if he ceases to be enrolled on the concerned State Register of Indian Medicine; or, iii) in the case of a member elected under Section 3(1)(b), if such member ceases to be a member of the faculty or Department of the Indian Medicine of the University concerned.

10. The Legislature has thus provided only the aforesaid contingencies in which a member of the respondent No.2 CCIM can be deemed to have vacated his seat. The Act does not deem an elected member to have vacated his seat, if found guilty of misappropriation of monies of respondent No.2 CCIM. The Legislature in its wisdom having not opted to

provide for vacation of the seat upon the member being found guilty of misappropriation, in my opinion, an elected member cannot be so barred from participating in the meetings / functioning of the respondent No.2 CCIM.

11. Moreover, the elected member is supposed to represent the State which has elected him, in the respondent No.2 CCIM. The effect of so debarring the elected member, would be to deprive the State which he represents from representation in the respondent No.2 CCIM; the same has serious consequences and cannot be inferred without the legislature having provided so. It cannot also be lost sight of that the petitioner was elected, not “by the CCIM”, for the respondent No.2 CCIM to exercise power of his removal, but “into CCIM” by the electorate in his State. For this reason also, any power in respondent No.2 CCIM to so debar the petitioner from participation and which debarment would have the effect of removal of petitioner from the respondent No.2 CCIM, cannot be inferred.

12. Faced with the aforesaid, the counsel for the respondent No.2 CCIM has contended that no absolute bar to participation of petitioner in affairs of respondent No.2 CCIM has been imposed and if the petitioner pays the

amount demanded, he can participate.

13. No merit is found in the said contention also. When the statute does not impose any conditions on participation by elected members in affairs of respondent No.2 CCIM, imposition of conditions particularly monetary and which are disputed, amounts to debarment only of the petitioner.

14. I find this Court in *Anil Agarwal Vs. The Institute of Chartered Accountants* 2000 IV AD (Delhi) 104, on a conspectus of the case law to have held that, rarely elected representatives can be removed by using implied and inherent powers which do not spell out from the statute or the Rules framed thereunder. Reference may also be made to the judgment of the Division Bench of Bombay High Court in *Hindurao Balwant Patil Vs. Krishnarao Parshuram Patil* AIR 1982 Bom. 216 holding that a right to contest the election and a right to recall the person already elected are not common law rights and these rights must be conferred by the statute and can be enforced only in accordance with and subject to the conditions laid down by the statute concerned. Another Division Bench of the Bombay High Court in *Zambar Rajaram Patil Vs. State of Maharashtra* MANU/MH/0166/2000 also held that the elected members cannot be

prohibited from taking part in the business of the Society unless and until their election is set aside. The Division Bench of the Rajasthan High Court also as far back as in *Kanta Devi Vs. State of Rajasthan* AIR 1957 Rajasthan 134 extended the principle that in the absence of a power to stop the elected members from functioning, they cannot be so stopped to nominated members also. The Supreme Court however in *Om Narain Agarwal Vs. Nagar Palika, Shahjahanpur* (1993) 2 SCC 242 carved out a distinction between an elected and a nominated member and held the tenure of the nominated members to be dependent on the pleasure doctrine.

15. There is another aspect of the matter. The finding / allegation of misappropriation against the petitioner is with respect to his previous tenure as a member of the respondent No.2 CCIM. Notwithstanding the said allegation, when the petitioner was allowed to participate in the election and has been so elected, without any express provision in this regard, such elected member cannot be prevented from participating in the functioning of the respondent No.2 CCIM.

16. Insofar as the argument of the counsel for the respondent No.2 CCIM of public monies being involved is concerned, all that can be done

is to grant liberty to the respondent No.2 CCIM to take such action as may be permitted in law against the petitioner.

17. The petition therefore succeeds.

18. It is declared that the petitioner being the elected member of the respondent No.2 CCIM is entitled to participate in the meetings / functioning of the respondent No.2 CCIM and the respondent No.2 CCIM is restrained from preventing the petitioner for the reasons aforesaid from so participating in the meetings / functioning of the respondent No.2 CCIM including in the meeting scheduled from 17th to 19th October, 2011. Liberty is however granted to the respondent No.2 CCIM to take action in accordance with law against the petitioner.

Dasti under signature of the Court Master.

CM Nos.16961-64/2011 (all for exemption)

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

OCTOBER 14, 2011

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