

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).NO. 15149 OF 2013 (P)

PETITIONER(S):

**DR. P.KRISHNADAS
PANNIKKODE HOUSE, PERINTHALMANNA TALUK
MALAPPURAM DISTRICT, KERALA STATE.**

**BY ADVS.SRI.N.SUKUMARAN (SR.)
SRI.S.SHYAM
SRI.V.K.BALACHANDRAN
SRI.BOBBYMATHEW KOOTHATTUKULAM
SRI.KURUVILLA JOHN**

RESPONDENT(S):

- 1. UNION OF INDIA
REPRESENTED BY ITS SECRETARY TO HEALTH
DEPARTMENT OF AYUSH
MINISTRY OF HEALTH AND FAMILY WELFARE, AYUSH BHAVAN
B BLOCK, G P O COMPLEX, INA OPPOSITE PARLIAMENT HOUSE
NEW DELHI-110023.**
- 2. RETURNING OFFICER
CENTRAL COUNCIL OF INDIAN MEDICINE, KERALA 2011
COMBINED COUNCIL BUILDING, RED CROSS ROAD
THIRUVANANTHAPURAM-696035.**
- 3. TRAVANCORE COCHIN MEDICAL COUNCIL (AYURVEDA)
COMBINED COUNCIL BUILDING, RED CROSS ROAD
THIRUVANANTHAPURAM-696035.**
- 4. DR.V.G.UDAYAKUMAR
ARABL, AREKKAD, EDARIKKODE P.O.
MALAPPURAM DISTRICT-695585.**
- 5. DR.RAMMOHAN
JAYARAM BHAVANAM, PRAKKANAM P.O.
PATHANAMTHITTA DISTRICT-689647.**
- 6. DR.RAMANADHAN DEVARAJA IYER
JNANI NIVAS, SANKARAE AYYER ROAD, POOTHOLE P.O.
THRISSUR-680004.**

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**7. DR.JOY JOSEPH
THACHIL DISPENSARY, ANGAMALI P.O., PIN-683572.**

**8. DR.N.RAVEENDRAN
MADATHIL NADA HOUSE, VALLYA VELI P.O.
THIRUVANANTHAPURAM-695021.**

**9. DR.C.RATHNAKARAN
MANGALATH HOUSE, PUTHIYAKAVU, TRIPUNITHURA
MANGALATH HOUSE, PUTHIYAKAVU, TRIPUNITHURA
ERNAKULAM DISTRICT, PIN-682301.**

**10. DR.VIJAYAN
NANGELIL, NELLIKKUZHI P.O., KOTHAMANGALAM
ERNAKULAM DISTRICT, PIN-686691.**

**R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R4,R5 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R4,R5 BY ADV. SRI.P.GOPINATH
R4,R5 BY ADV. SRI.P.BENNY THOMAS
R4,R5 BY ADV. SRI.K.JOHN MATHAI
R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : TRUE COPY OF THE INDIAN MEDICINE CENTRAL COUNCIL (ELECTION) RULES 1975.

EXHIBIT P2 : TRUE COPY OF THE NOTIFICATION ISSUED BY R2 DT.4-5-2011.

EXHIBIT P3 : TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE R1 DT.1-8-2011.

EXHIBIT P4 : TRUE COPY OF THE LETTER ISSUED BY R1 DT.2-4-2012.

EXHIBIT P5 : TRUE COPY OF THE LETTER ISSUED BY R1 DT.2-4-2012.

EXHIBIT P6 : TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE ENQUIRY OFFICER DT.10-4-2012.

EXHIBIT P7 : TRUE COPY OF THE JUDGMENT DT.11-4-2012 IN WPC 21834/2011 OF THE HONOURABLE HIGH COURT OF KERALA

EXHIBIT P8 : TRUE COPY OF THE REPORT SUBMITTED BEFORE THE R1 BY THE ENQUIRY OFFICER DT.8-10-2012.

EXHIBIT P9 : TRUE COPY OF THE ORDER ISSUED BY R1 DT.22-10-2013.

EXHIBIT P10 : TRUE COPY OF THE EXTRACT OF THE REGISTER OF PRACTITIONERS PART A MAINTAINED BY R3.

EXHIBIT P11 : TRUE COPY OF THE EXTRACT OF THE REGISTER OF PRACTITIONERS PART B MAINTAINED BY R3.

EXHIBIT P12 : TRUE COPY OF THE EXTRACT OF VOTERS LIST PREPARED BY R2.

EXHIBIT P13 : TRUE COPY OF THE EXTRACT OF VOTERS LIST PREPARED BY R2.

EXHIBIT P14 : TRUE COPY OF THE REPORT SUBMITTED BY THE ENQUIRY OFFICER DT.8-5-2012.

EXHIBIT P15 : TRUE COPY OF THE ORDER OF R1 DT.18-6-2012.

EXHIBIT P16 : TRUE COPY OF THE MINUTES OF THE MEETING OF R3 DT.11-3-2011.

EXHIBIT P17 : TRUE COPY OF THE MINUTES OF THE MEETING OF R3 DT.11-3-2011.

EXHIBIT P17(A) : TRUE ENGLISH TRANSLATION OF EXT.P17.

EXHIBIT P18 : TRUE COPY OF THE LETTER DT.3-9-2010 ISSUED TO R1 BY THE RETURNING OFFICER.

EXHIBIT P19: TRUE COPY OF THE INFORMATION GIVEN BY THE SENIOR SUPERINTENDENT OF POSTOFFICES DT.4-3-2013.

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**EXHIBIT P20 : TRUE COPY OF THE INFORMATION GIVEN BY R3 AS PER LETTER
DT.14-4-2013.**

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

P.V.ASHA, J.

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Dated this the 6th day of August, 2015

JUDGMENT

This writ petition is filed challenging the improper conduct of election by which the respondents 4 and 5 were elected to the 2 seats allocated for Kerala to the Central Council of Indian Medicine in the Ayurveda system, held under Section 3(1) (a) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as 'the Act').

2. Petitioner complains that the entire process of the election was in violation of the procedure prescribed in the rules. Several persons whose name appeared in the voters list are dead and number of voters above the age of 100 years are included in the voters list, as can be seen from the voters list; names of several persons were deleted without proper notice, etc. Petitioner had approached the statutory authorities challenging the election of respondents 4 and 5, filing representation dated 1.8.2011, under Section 4 (2) of the Act, on various grounds in the conduct of election

including the anomalies in the voters list. Though that representation was rejected initially, the 2nd respondent conducted an enquiry into the matter, with the participation of petitioner. In the Ext.P8 enquiry report submitted by the 2nd respondent, no reason was found for interference. However the following findings of the Enquiry Officer taking note of the total number of voting papers despatched, number of voting papers received back, number of voters above the age of 100 years as per state register and the votes polled in favour of each candidate, found as follows:-

"If "C" in full or in part, forms part of "A", there is a likelihood that the election result would be affected, as the margin of votes polled by the II and III candidates is only 125. The situation could have been prevented had the Complainant raised this issue before the voting papers were dispatched or when voting papers were received and being opened when all the candidates were supposed to be present. There were ample opportunity available for the Complainant to take up the matter at an earlier stage, i.e before the Returning Officer at the time of dispatch of voting papers or at the time of opening of the voting covers. The Complainant has failed to do so and he has not been able to prove that this has changed the outcome of the election. Therefore, the benefit of doubt should go to the elected candidates."

Based on the findings in Ext.P8 enquiry report, the Government of India rejected his petition. This Writ Petition

is filed as against the order Ext. P9, seeking directions to update the State Register of Medical Practitioners in Ayurveda and to conduct a fresh election.

3. Petitioner submits that based on similar statistics as mentioned above in Ext.P8, on a petition filed against the election to the Sidha constituency, the findings of the enquiry officer was totally different saying that voting papers issued to dead persons affected the results of the election and there was a direction to the returning officer to update the voters list, as per Ext.P16. Petitioner has attacked the differential treatment to Ayurveda constituency on various grounds, which the respondents have disputed and denied.

4. I heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

5. From the findings of the enquiry officer in Ext. P8 inquiry report it is evident that the election was not conducted on the basis of a proper voters list. It is seen

that the term of elected members will be over by 2016. Therefore an adjudication on the contentions raised by the parties on merits at this stage will only be academic and will not ensure to the benefit of anybody in any manner. Therefore I do not propose to consider the allegations and counter allegation levelled against each of the parties. As various anomalies have been pointed out regarding the conduct of election including preparation and finalisation of the voters list, which was prepared based on a register maintained contrary to the provisions contained in the Travancore Cochin Medical Practitioner's Act, it is only appropriate that the register of practitioners is updated first strictly in accordance with the procedure provided in the Act and Rules and effecting appropriate deletions/additions and modifications, well before the next election, based on which a proper voters list with members who are alive can be prepared without giving room for such complaints any more.

6. As per Rule 3 of the Indian Medicine Central Council (Election) Rules, 1975 (hereinafter referred to as 'the Rules' for short), the persons whose names are enrolled in a State register are entitled to vote in the election to Central Council. As per Rule 4 it is for the Registrar to ensure that the register is maintained up-to-date. As per Rule 5, the election is to be held by the returning officer calling upon the practitioners registered in the State. Rule 8 provides that returning Officer has to decide who are the persons entitled to vote from the State register. Rules 14 to 17 provides for the further procedures to be adopted by the returning officer for the conduct of election.

7. Section 20 of the Travancore Cochin Medical Practitioners Act, 1953 (hereinafter referred to as the Act 1955 for short), provides for the duties of Registrar. Under Sub section (2) there shall be separate registers for modern medicine, Homeopathic medicine, Ayurvedic medicine, Siddha medicine and Unani Tibbi medicine, as prescribed by

rules and divided into two parts, containing the names of practitioners holding recognised qualifications and the names of practitioners holding appointment under the Government at the commencement of this Act, and Part B shall contain the names of those registers by virtue of clause (ii) of Sub Section 23. Sub Section (3) of Section 20 provides that Registrar shall keep the registers correct in accordance with the provisions of Act and Rules and regulations made thereunder, and shall remove from the registers the names of registered practitioners who are dead or whose names are directed to be removed from the registers under Section 28,33 and 34. Section 23 provides for eligibility for registration. Under Section 23(1) (i) every holder of a recognised qualification and every practitioner holding appointment under the Government at the commencement of this Act, and (ii) every person who, within the period of one year or such other longer period as may be fixed by the Government from the date on which

this Act came into force, prove to the satisfaction of the appropriate council that he has been in regular practice as a practitioner for a period of not less than five years preceding the first day of April 1953 shall be eligible for registration under the Act. It is further provided that no practitioner shall be registered under clause (ii) after the expiry of one year, or such other longer period as may be fixed by the Government, from the date on which this Act comes into force. Section 28 provides for the removal from registers by council. Sub Section (1) provides that any person who becomes subject to any of the disqualification as provided under clause (b) to (d) of Section 7 are liable to be removed altogether or for a specified period from the register. Section 29 provides for removal from registers on application also. Section 30 provides that the register shall in every year on or before the date to be fixed by the appropriate council, cause to be published in the Gazette a full list of the names and qualifications of all practitioners

registered under the Act, and the date when such qualifications were acquired. Under Section 30(2) the names of the practitioners whose names are removed shall be published in the gazette from time to time. Every person's name which has been included in the list is presumed to be a registered practitioner.

8. In view of the circumstances of the case, especially when the petition filed against the election was rejected on the ground that he failed to take action at an earlier stage, this writ petition can be disposed of with a direction to the authorities to see that the next election is conducted based on a valid and proper voters list.

Under the above circumstances, the 3rd respondent is directed to take appropriate action to see that the register of medical practitioners in Ayurveda in the State of Kerala is up-dated strictly in accordance with law after deleting those members who are dead, removed, disqualified, etc. and effecting additions if necessary as per rules so that there is

a proper electorate prepared, finalised and published complying with all the procedural formalities, as per rules, within a period of 3 months from the date of receipt of a copy of this judgment.

This writ petition is disposed of accordingly .

Sd/-
P.V.ASHA, JUDGE

SKV