

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C). No.30278 of 2013 (H)

PETITIONER(S):

**C.V.INASU @ BABY,
CHALISSERY HOUSE, CHELAKKARA P O,
THRISSUR DIST, PIN-680586**

**BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.V.S.SHIRAZ BAVA**

RESPONDENT(S):

- 1. STATE OF KERALA
REP BY ITS SECRETARY TO GOVERNMENT,
HEALTH FOR FAMILY WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001**
- 2. KERALA STATE PHARMACY COUNCIL,
M N G V, ADIYODI MEMORIAL PHARMACY BHAVAN,
P H LAB CAMPUS, THIRUVANANTHAPURAM, PIN-695035**
- 3. THE DEPUTY SECRETARY,
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001(THE RETURNING OFFICER
KERALA STATE PHARMACY CUONCIL , M N G V
ADIYODI MEMORIAL PHARMACY BHAVAN, P H LAB CAMPUS
THIRUVANANTHAPURAM, PIN-695035**

**R2 BY ADV. SRI.P.B.SAHASRANAMAN, SC, KERALA STATE PHARMACY COUNCIL
R1 & R3 BY GOVERNMENT PLEADER SRI. ABDUL SALAM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PETITIONER(S)' EXHIBITS:-

- P1:- TRUE COPY OF THE NOTIFICATION BEARING NO D3/2013/KPC DTD 15/3/2013, WHICH WAS PUBLISHED IN THE GAZETTE IN 24/4/2013.
- P2:- TRUE COPY OF THE LIST OF CANDIDATES, NOTIFIED BY THE 3RD RESPONDENT IN THE OFFICAL GAZETTE ON 7/5/2013.
- P3:- TRUE COPY OF THE COMPLAINT DTD 2/5/2013.
- P4:- TRUE COPY OF THE REPLY BEARING NO 19554/F1/13/H&FWD DTD 14/5/013.
- P5:- TRUE COPY OF THE ONE OF THE SUB NOTICE.
- P6:- TRUE COPY OF THE ANOTHER COMPLAINT DTD 15/6/2013.
- P7:- TRUE COPY OF THE POSTAL COVER RECEIVED BY THE CHITRA JANARDHANAN.
- P7(A):- TRUE COPY OF THE POSTAL COVER RECEIVED BY THE CHITRA JANARDHANAN.
- P8:- TRUE COPY OF POSTAL COVER RECEIVED BY REJI K G.
- P8(A):- TRUE COPY OF POSTAL COVER RECEIVED BY REJI K G.
- P9:- TRUE COPY OF THE COVER RECEIVED BY THEM , WHICH CONTAIN SPACE FOR NAME AND SERIAL NUMBER OF VOTER.
- P9(A):- TRUE COPY OF THE COVER RECEIVED BY THEM, WHICH CONTAIN SPACE FOR NAME AND SERICAL NUMBER OF VOTER.
- P10:- TRUE COPY OF THE AFORESAID INTERIM ORDER DTD 19/7/2013.
- P11:- TRUE COPY OF THE COMPLAINT DTD 27/7/2013.
- P12:- TRUE COPY OF THE AFORESAID ORDER BEARING NO 3599./F1/13/H&FWD DTD 23/8/2013.
- P13:- TRUE COPY OF THE POSTAL RECEIPT DATED 27.7.2013 EVIDENCING EXT.P11 PETITION WAS FORWARDED TO THE RETURNING OFFICER.
- P14:- TRUE COPY OF THE ACKNOWLEDGMENT CARD EVIDENCING THE RECEIPT OF EXT.P11 PETITION RECEIVED BY THE RETURNING OFFICER AT THE OFFICE OF THE 2ND RESPONDENT COUNCIL ON 29.7.2013.

RESPONDENT(S)' EXHIBITS:- NIL

KRJ

**/True Copy/
P.A to Judge**

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.30278 of 2013

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Dated this the 29th day of January, 2015

JUDGMENT

Ext.P12 order passed by the first respondent, by which the petition filed by the petitioner highlighting the irregularities in the election to the State Council of the second respondent held on 23.7.2013 was rejected, is under challenge.

2. The petitioner is a Pharmacist registered under the provisions contained in Chapter IV of the Pharmacy Act, 1948. He was also a candidate in the election to the State council which was held on 23.7.2012. He submitted a petition highlighting the irregularities in the election campaign. The petitioner alleges that he submitted Ext.P11 petition within the period mentioned in Rule 8 of the Kerala State Pharmacy Council Rules, 2012. However, without considering any of the said objections and without conducting any enquiry in the manner contemplated under the said provision, and

without hearing the petitioner, Ext.P12 order was passed by the first respondent. It is with this background, the petitioner has come up before this Court.

3. A detailed counter affidavit has been filed by the respondent State refuting the allegations in the writ petition.

4. Arguments have been heard.

5. Rule 8 of the Kerala State Pharmacy Council Rules, 2012 which deals with the manner in which a petition against the irregularities in the election has to be dealt with. It reads as follows:

“8(1) If any dispute arises as to intention, construction or application of the rules regarding the election, the aggrieved person may submit a petition in writing to the Returning Officer, either in person or through a person authorised by him or by registered post with acknowledgment due within 7 days of publication of result,

(2) The Returning Officer shall forward the petition received by him to the Secretary to the Government, Health and Family Welfare Department

together with his remarks thereon within 14 days of receipt of the petition.

(3) The Government shall on receipt of an election petition or petitions from the Returning Officer, appoint within 21 days of receipt of such petition or petitions a person not below the rank of Deputy Secretary to Government, or a person holding a equivalent position the service of Government as Enquiry Officer to enquire into the matter and furnish a report within 3 months from the date of receipt of the petition or petitions by the Enquiry Officer.

(4) The Government shall on receipt of report from the Enquiry Officer so appointed after satisfying the principles of natural justice, take a final decision on the petition or petitions within 45 days from the date of receipt of report from the Enquiry Officer.

(5) The Government may, if it so decides, set aside an election after affording an opportunity of being heard to all the candidates contested in the election, all official engaged in election duty and any other person or persons whom Government may consider necessary to hear for taking such decision.”

6. The learned counsel for the petitioner would submit that the Returning Officer has not forwarded the petition received by him to the Secretary to the Government, Health and Family Welfare Department under sub-rule (2) of Rule 8 of the Rules. It was pointed out that the petitioner by way of abundant caution has sent a copy of the petition directly to the Secretary which was acted upon resulting in Ext.P12. This, according to the petitioner, is without affording him an opportunity of being heard.

7. It is evident from the materials now placed on board that the contention taken by the State is that the application was not received by the 1st respondent in time. But, it can be seen from the materials now placed on record that the petitioner has submitted the application in time before the Returning Officer. However, on account of the laches on the part of the returning officer, the matter could not reach the first respondent in time. Therefore, the rejection of the petitioner's application on the ground of limitation is illegal.

8. Moreover, it is also evident that the petitioner was not given an opportunity of being heard before Ext.P12 was passed. Therefore, the interference of this Court is warranted and the matter requires a re-look by the respondents after affording the petitioner an opportunity of being heard.

In the result, the writ petition is allowed. Ext.P12 is quashed. The matter is remitted back to the first respondent for reconsideration of Ext.P11 after affording the petitioner an opportunity of being heard. The entire exercise shall be completed by the first respondent within a period of one month from the date of receipt of a copy of this judgment.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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