

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.4323 of 2014

Dr.R.Gnansambandam

.. Petitioner

Vs.

1.The Secretary,
Department of Ayush,
Ministry of Health and Family Welfare,
Government of India,
B Block, GPO Complex,
New Delhi - 110 023.

2.The Secretary cum Registrar,
Central Council of Homeopathy,
Anusandhan Bhawan,
61-65, Institutional Area,
Opp. 'D' Block, Jank Puri,
New Delhi - 110 058.

3.Dr.G.P.Hahnemann

4.Dr.G.Nirmal

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the first respondent to terminate the membership of the third and fourth respondents in the Central Council of Homeopathy in terms of the direction of the Hon'ble Supreme Court of India in the K.B.Nagur vs., Union of India case dated 24.02.2012.

For Petitioner : Mr.J.Saravanavel

For Respondents : Mr.P.T.Ramkumar CGSC for RR1&R2
Mr.M.Sriram for R4
R3-No Appearance

O R D E R

By consent of the learned counsels on either side, the writ petition is taken up for final disposal.

2. Heard Mr. Palani Selvaraj, learned Counsel assisted by Mr. P. T. Ramkumar, learned Central Government Standing Counsel appearing for respondents 1 and 2 and Mr. M. Sriram learned counsel appearing for the fourth respondent.

3. The Writ Petition has been filed for issuance of a Writ of Mandamus to direct the first respondent to terminate the membership of the third and fourth respondents in the Central Council of Homeopathy in terms of the directions of the Hon'ble Supreme Court in the case of K. B. Nagur vs. Union of India, dated 24.02.2012.

4. The petitioner is a practising Homeopathy Doctor registered with the Central Council for Homeopathy and he is presently Governing Body Member of the Council. The petitioner has served in various capacity in the respondents 1 and 2.

5. The issue involved in this Writ Petition with regard to continuance of the office of the Directorship by the respondents 3 and 4. In this regard, it is worthwhile to take note of Section 7 of the Homeopathy Central Council Act, 1973 (Act), which reads as follows:-

(1) The President, Vice-President or a member of the Central Council shall hold office for a term of five years from the date of his election or nomination, as the case may be, or until his successor shall have been duly elected or nominated, whichever is longer.

(2) A person who holds or who has held office as President or Vice-President of the Central Council, shall be eligible for re-election to that office once, but only once.

(3) Members of the Central Council shall be eligible for re-election or re-nomination.

(4) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Central Council, from three consecutive ordinary meetings of the Central Council or, in the case of a member elected under clause (a) of sub-section (1) of section 3, if he ceases to be enrolled on the concerned State Register of Homoeopathy, or in the case of a member elected under clause (b) of that sub-section, if he ceases to be a member of the Faculty or Department (by whatever name called) of Homoeopathy of the University concerned.

(5) A casual vacancy in the Central Council shall be filled by election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(6) Where the said term of five years is about to expire in respect of any member, a successor may be elected or nominated at any time within three months before the said term expires but he shall not assume office until the said term has expired.

6. In terms of sub-section (1) of Section 7, The President, Vice-President or a member of the Central Council shall hold office for a term of five years from the date of his election or nomination, as the case may be, or until his successor shall have been duly elected or nominated, whichever is longer. The Indian Central Medicine is also para materia with the same.

7. The learned counsel appearing for the petitioner invited the attention of this Court to the decision of the Hon'ble Supreme Court in the case of K.B.Nagur M.D., (Ayurvedic) vs. Union of India, reported in (2012) 4 SCC 483, wherein the Hon'ble Supreme Court considering the provisions of the Indian Medicine Central Council Act, which regulates Ayurveda, Siddha and Unani Medicine form of practising and taking note of the mandate in Section 7 of the Act observed that no elected Member, under the system 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. The petitioner also referred to the decision taken by the second respondent namely, CCIM Election Cell and in clause 12 of the decision dated 04.06.2012, the following has been decided upon:-

12. Even though elections were completed last year, in continuation of its earlier order, the Supreme Court has given final Order vide its judgment dated 24th February 2012 in which it has specifically directed that the Central Government has to hold elections within the period of five years; 'in exceptional circumstances elections may be delayed beyond five years, but not exceeding three months;' and in any case no elected member shall hold office beyond a period of three months from expiry of their term. This will now, therefore, necessarily form the basis for future elections.

8. Further in respect of future cases, a decision has been taken on 06.06.2012 to the following effect:-

In future:-

(i) Court cases/stays based on allegations of non-updation of electoral rolls by State Registrars functioning under State laws are not expected to be a major issue. This problem has been addressed while amending the CCIM Election Rules in March and May this year, as brought out

in para 13 on page 2/n. Of course, the amendments were necessitated because of an ongoing CCIM election related Court Case - nonetheless, the Rules have been amended for the first time ever.

9. Pointing out all the above aspects, the petitioner submitted a representation on 02.10.2013, stating that the respondents 3 and 4 cannot endlessly continue in office, as the term was expired on 10.10.2013. For the same, a reply has been sent by the Director, Department of Ayush stating that in order to initiate election process and conduct of timely election of two members to CCH, from the State of Tamil Nadu, it has requested to the Government of Tamil Nadu on 07.01.2013 to recommend the names of appropriate level officers under the provision of Rule 2(d) of HCC (Election) Rules, 1975 for appointment as Returning Officer, by the Central Government and frequently pursuing the matter for early action, as the elections are to be conducted by the Returning Officer as per HCC Election Rules.

10. It is not known as to what action has been taken to the request made by the petitioner. However, the respondents 1 and 2 had not addressed the issue which has been pointed out by the petitioner in his representation wherein the petitioner has referred to the decision of the Hon'ble Supreme Court. Therefore, while considering the representation, definitely the respondents 1 and 2 should take note of what has been pointed out by the petitioner and give an appropriate reply.

11. In the light of the above, there will be a direction to the second respondent to consider the petitioner's representation and give a detailed reply to the contentions raised by the petitioner after hearing the petitioners as well as the respondents 3 and 4, within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

pbn

To

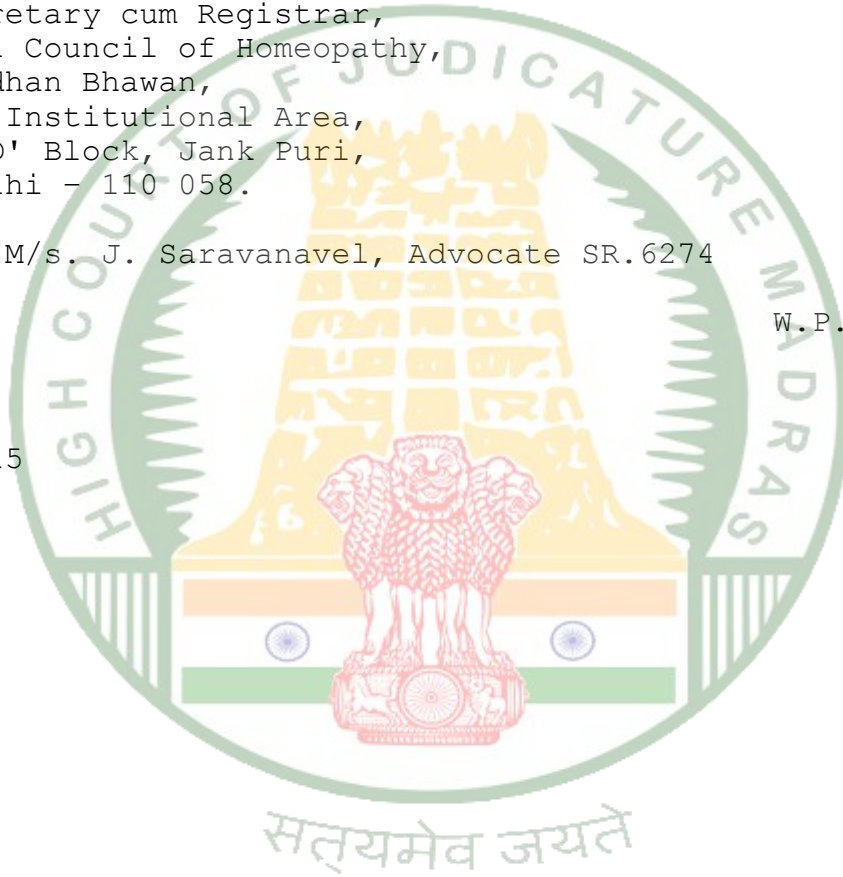
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+ 1 cc to M/s. J. Saravanavel, Advocate SR.6274

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MP (CO)
Eu 19.02.15



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