

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2015

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THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.18018 of 2015
and
M.P.Nos.1 and 2 of 2015

Dr.G.Kamalahasan

...Petitioner

- Vs -

1. The Union of India,
Represented by its Secretary,
Ministry of Health & Family Welfare,
(Department of AYUSH),
Indian Red Cross Society Building,
Red Cross Road,
New Delhi-110 001.

2. The Secretary and Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy,
Chennai-600 032.

3. The Registrar,
Tamil Nadu Board of Indian Medicine,
Central Council Office,
Arumbakkam,
Chennai-600 106.

4. The Returning Officer,
CCIM Election,
Additional Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

5. Dr.R.Veeracholan,

6. Dr.S.Sowrirajan

7. Dr.K.M.Senthamizhselvan,

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, calling for the records from the 4th respondent insofar as it relates to election notification dated 04.03.2015 in Reference No.1354/IM2/2/2015, No.VI (1)/69/2015 relating to conduct of election of members to the Central Council of Indian Medicine (Ayurveda/Unani) for the State of Tamil Nadu-2015 and quash the said notification insofar as it relates to serial Nos.7 to 10 i.e., Despatch of voting papers, declaration forms and letter of intimation etc., to electors, Receipt of voting papers, Scrutiny and counting of votes and declaration of results and direct the 4th respondent to reprint and circulate the voting papers in Form-II in terms of containing Rule 13(4) the names of duly nominated contesting candidates in alphabetical order in the voting paper complying with the Indian Medicine Central Council (Election) Rules 1975 strictly without any deviation.

For Petitioner : Mr.J.Rajakalifulla
for M/s.K.Sellathurai

For 1st Respondent : Mr.N.Rajan, SCGSC

For 4th respondent : Ms.P.Rajalakshmi,
Govt. Advocate

For 5th respondent : Mr.S.Sundaresan

O R D E R

Heard both sides.

2. The petitioner is one of the candidates who filed nomination in the election of member to Central Council of Indian Medicine (Ayurveda/Unani) from the state of Tamil Nadu, in pursuant to the notification issued in the Tamil Nadu Government Gazette dated

04.03.2015. Five nominations have been received and subsequently out of five one person has withdrawn his nomination and the same is also accepted. Thus, four persons were in the fray. It was found that the private respondent viz., R. Veeracholam, having secured 373 as against the petitioner who has secured 87 was duly declared as a member of the Central Council of Indian Medicine (Ayurveda/Unani) from the state of Tamil Nadu. However, the said selection was made subject to the the result of the Writ Petition, as the petitioner is challenging the election on the ground of procedural violation.

3. The learned counsel for the petitioner submitted that there is a violation of rules. As per Clause 13 (4)(A) of the Indian Medicine Central Council (Election) Rules, 1975 (hereinafter referred to as a rule) the Returning Officer shall publish the fact of posting the voting papers and connected papers at the addresses of the electors in one issue of the daily newspaper in English language and the same has not been published. As per clause 13 (4) of the said Rule, Returning Officer shall send by post to each elector a letter of intimation in Form IV together with a numbered declaration paper in Form III, a voting paper in Form II containing the names of candidates in alphabetical order and the same has not been done. There is a violation of Rule 13(3) as well.

4. In the counter affidavit filed by the fourth respondent the said violations have been admitted.

5. The learned counsel for the petitioner placing reliance upon the decision of this Court in K.Munusamy Versus The State Election Commissioner, Tamil Nadu State Election Commission reported in 2008 (1) CTC 762, has submitted that the entire process will have to be set aside.

6. The learned counsels appearing for the respondents submitted that though there are procedural violations, no prejudice is caused to the petitioner because of the said procedural violations and hence, no interference is required, particularly, in view of the availability of the alternative remedy under Rule 27 of the Indian Medicine Central Council (Election) Rules, 1975.

7. By way of reply, the learned counsel for the petitioner has submitted that Rule 27 cannot be made applicable in view of the limited power conferred under Rule 25 read with Section 4 of the Central Council (Election) Rules, 1975.

8. The facts referred above would go to show that what is alleged is only procedural violations. Rule 25 dealt with a different situation viz., the power of the Central Government in declaring the elections void. Rule 27 allows the Returning Officer or the Registrar to enquire into the dispute raised during the election process. Thus, both operate on different fields. The power of Returning officer or the Registrar of Universities can also be exercised by the Central Government under Rule 27. This can be seen on a reading of Section 4(2) which clearly states that election is required to be conducted as per the rules and any dispute which arises regarding any such election shall be referred to Central Government as per Rule 27. Thus, such a power can be exercised by the Central Government. The decision relied upon by the learned counsel for the petitioner is not applicable to the case on hand for the simple reason that there is no abuse of power involved. As regards the procedural violation governing the entire conduct of election it is a matter for the Central Government to look into as the petitioner has admittedly given objections and he has also approached this Court seeking to redress his grievance.

9. In view of the above, it would be suffice to direct the petitioner to make a request to the Central Government seeking to exercise Rule 27 read with Section 4(2) of the Act. Accordingly, the petitioner is directed to make a request to the Central Government within a period of four weeks from the date of receipt of a copy of this order and on such request, the Central Government shall decide the same on merits and in accordance with law, within a further period of sixty days after following due process of law.

With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

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Sub Assistant Registrar

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To

1. The Secretary,
The Union of India,
Ministry of Health & Family Welfare,
(Department of AYUSH),
Indian Red Cross Society Building,
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4. The Returning Officer,
CCIM Election,
Additional Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai-600 009.

1 CC to Mr.N.Rajan, SCGSC, Advocate SR.No. 51800

1 CC to Mr.S.Sundaresan, Advocate SR.No. 51813

1 CC to the Government Pleader, SR.No. 51821

1 CC to M/s.K.Sellathurai, Advocate SR.No. 51947

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SVI (CO)
PSI (07.10.2015)

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