

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

% **Date of decision: 16th November, 2015.**

+ **W.P.(C) 7403/2015 & CM No.13650/2015 (for stay)**

DR. RASHIDULLAH KHAN & ORS **Petitioners**
Through: Ms. Tasneem Ahmadi with Mr.
Pramod Kumar, Advs.

Versus

GOVERNMENT OF NCT DELHI **Respondent**
Through: Mr. Anuj Aggarwal, Adv. with Ms.
Hema Kolhe, Dy. Director & Ms.
Alka, Head Clerk (AYUSH)

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The nine petitioners being the members of the Delhi Bharatiya Chikitsa Parishad (DBCP) constituted vide Notification dated 11th September, 2011 for a period of five years under the Delhi Bharatiya Chikitsa Parishad Act, 1998 have filed this petition impugning the order dated 16th July, 2015 of the respondent Government of NCT of Delhi (GNCTD) of dissolution of the said Parishad in exercise of powers under Section 32 of the said Act.

2. Notice of the petition was issued and considering the contention of the counsel for the petitioner that as per Section 32 a new Parishad has to be constituted within six months of dissolution, counter affidavit was directed

to be positively filed within 10 days and rejoinder permitted to be filed before today and the matter listed today for hearing.

3. Though counter affidavit was not filed but the counsel for the respondent has handed over the counter affidavit in Court and which is taken on record. He also states that the entire records have been brought for perusal of this Court.

4. Though the counsel for the petitioner had no opportunity to go through the counter affidavit but opted to argue the matter and after hearing also it appears that there is really no need to go through the counter affidavit or to give an opportunity for filing the rejoinder. The counsels have been heard.

5. The counsel for the petitioner has argued i) that for an action under Section 32 of the Act, the decision has to be of the appropriate government; ii) it is the appropriate government which is to be of the opinion that the Parishad or its President or Vice President have failed to exercise or has exceeded or abused any of the powers conferred upon them by or under the Act and such failure, excess, abuse or incapacity is of a serious character; iii) the appropriate government has to give a notice to the Parishad / President / Vice President to remedy the said abuse / excess / failure; iv) the appropriate

government has the option to either remove the President or the Vice President or dissolve the Parishad; v) the appropriate government, as per Section 2(g) of the Act, is the Lieutenant Governor of Delhi as referred to in Clause (1) of Article 239AA of the Constitution; vi) there is no failure on the part of the Parishad to remedy the failure / abuse / excess; vii) that instead of removing the President who was guilty, the extreme step of dissolution of the Parishad has been taken; viii) that the failure to remedy was not of a serious character; ix) attention in this regard is invited to the show cause notice.

6. As far as the first of the aforesaid contentions is concerned, it is not the case of the petitioners that the subject matter is protected under Clause (1) of Article 239AA of the Constitution. It is also not the case that the Lieutenant Governor, in exercise of power under Section 32 of the Act, is to act *eo-nomine* or in his personal individual capacity. In the absence thereof, even if the decision is of the Council of Ministers of the Legislative Assembly of Delhi and is merely approved by the Lieutenant Governor, the same would not constitute any ground of challenge. Moreover, the counsel for the respondent, from the file, has demonstrated that the Lieutenant Governor was consulted in the matter and the action of dissolution has the

approval of the Lieutenant Governor.

7. The facts are not in dispute.

8. The respondent, on 27th April, 2015 issued a notice to show cause under Section 32 supra to Sh. R.S. Chauhan, President of the Parishad, directing compliance with the following directions:

- “1. Terminate services of Sh. Mohd. Zafar, Personal Secretary in the Parishad with immediate effect.
2. Lodge a FIR against the then President and Registrar, of the Parishad who had given appointment to Sh. Mohd. Zafar despite the fact that the post was not advertised and they knew that Sh. Zafar had submitted a forged marksheet in A and U Tibbia College and his admission had been cancelled.
3. Frame the Recruitment Rules of the Registrar of the Parishad as per the directions of Hon’ble Lt. Governor of NCT of Delhi.”

9. The President of the Parishad vide reply dated 5th May, 2015 to the aforesaid show cause notice informed of Sh. Mohd. Zafar having submitted his resignation on 29th April, 2015 and having been relieved from the services of the Parishad on 30th April, 2015. It was further informed that an Extraordinary General House Meeting of the members of the Parishad had been called for and the Minutes thereof would be disclosed.

10. The counsel for the petitioners has contended that the reply dated 5th May, 2015 was by Dr. R.S. Chauhan, President in his personal capacity and

was not in the knowledge of the petitioners as members of the Parishad, as is evident from no meeting of the members of the Parishad having been called till the issuance of the said reply.

11. The notice of the meeting called for on 15th May, 2015 informed the members of the show cause notice aforesaid and described the agenda of the meeting as 'to table the show cause notice for perusal of the members'.

12. In the meeting held on 15th May, 2015 and which was attended by the petitioners, (i) the factum of Sh. Mohd. Zafar having resigned and his resignation having been accepted was taken note of and unanimously approved by the Parishad save for the rider that the salary for the month of April, 2015 already paid to Sh. Mohd. Zafar was resolved to be recovered back; (ii) with respect to lodging of the FIR against the President and Registrar of the Parishad in existence prior to the constitution of the current Parishad vide Notification dated 11th September, 2011, it was unanimously resolved that no action was required to be taken against the then President and Registrar of the Parishad who had given appointment to Sh. Mohd. Zafar; (iii) with regard to the framing of recruitment rules of Registrar in the Parishad, it was also resolved to adopt the pattern of the Central Council of Indian Medicine constituted under the Indian Medicine Central Council Act,

1970.

13. The counsel for the petitioners, from the paragraph reproduced below in the Minutes of Extraordinary Meeting of Parishad dated 15th May, 2015 has contended that the resolution not to lodge the FIR as has been directed in the notice supra dated 27th April, 2015 was not unanimous:

“Before conclusion of meeting it was unanimously decided that an extraordinary meeting of Parishad will be held on 27.05.2015 at 3.00 PM in the office of Parishad to review and analyse the working of the Parishad including President, Executive Committee and working relationship / co-ordination with the Delhi Government. Notice be issued accordingly.”

and has argued that thus the petitioners cannot be blamed for the decision taken not to lodge the FIR.

14. I am however unable to agree. The resolution regarding not lodging the FIR against the President and Registrar who had given appointment to Sh. Mohd. Zafar is unequivocally recorded as “unanimous” in the minutes which have admittedly been signed by the petitioners. The resolution in the said minutes to call for an extraordinary meeting of the Parishad on 27th May, 2015 is only to review and analyse the working of the Parishad etc. and not to review the decision not to take any action against the past President and the Registrar. The same becomes further evident from the

notice dated 15th May, 2015 of the proposed meeting on 27th May, 2015 describing the agenda thereof as under:

- “1. To Review and analyse the working of the Parishad including President, Executive Committee and working relationship / co-ordination with the Delhi Government.
2. Explore the feasibility of constitution of different committees for smooth functioning of the Parishad.
3. To decide upon the activities related to International Yoga Day and organization of CME's for the practitioners of Ayurveda & Unani.”

15. The counsel for the petitioners has further drawn attention to the letter dated 27th May, 2015 of the petitioners along with certain others to the President recording that no resolutions were passed in the meeting held on 27th May, 2015 on any of the agenda items and therefrom has sought to contend that though the petitioners wanted the matter relating to the filing of FIR against the past President and Registrar to be taken up but the same was not permitted by the President Sh. R.S. Chauhan.

16. However the letter dated 27th May, 2015 requests for calling for another meeting to discuss the agenda as fixed for the meeting of 27th May, 2015 along with the following additional agenda:

- “(i). To discuss and decide the resolution put up in the meeting regarding review and analyse the working of President, DBCP

Dr. R.S. Chauhan;

- (ii) To review and decide that as to whether Dr. R.S. Chauhan should be allowed further to continue as President of Delhi Bharatiya Chikitsa Parishad or not; and further to discuss the matter of election of the successor President of Delhi Bharatiya Chikitsa Parishad if the situation so arise.”

Therefrom also it is not spelt out that the petitioners desired the unanimous resolution passed in the meeting of 15th May, 2015, not to lodge FIR, to be reviewed.

17. In pursuance to the letter dated 27th May, 2015 supra, another meeting of the members of the Parishad was held on 15th June, 2015 but which also does not contain any decision on the matter of the FIR, directed by the GNCTD to be filed, though Dr. R.S. Chauhan was removed from the post of the President of the Parishad in the said meeting.

18. I have enquired from the counsel for the petitioners whether the petitioners are challenging the power of the appropriate government to issue directions and / or the said directions being binding on the Parishad.

19. The counsel for the petitioners fairly admits that the same is not under challenge.

20. To complete the chronology of events, the Parishad was vide communication dated 10th July, 2015 informed of the dissolution of the

Parishad having been approved and the communication in that regard being sent shortly and the Parishad was asked not to transact any business.

21. It is in response thereto that the Parishad, including the petitioners, sent a communication dated 13th July, 2015 to the GNCTD stating that they were of the view that the FIR should be lodged at the earliest and will lodge the FIR immediately upon the records which were with the government / inquiry committee being sent to the Parishad.

22. It may be noticed that in the said communication also, it was not the case of the petitioners or the Parishad that the unanimous resolutions as stated in the minutes of the earlier meetings to the effect that no action should be taken against the past President and Registrar, were not unanimous or were passed inspite of their opposition.

23. I have then enquired from the counsel for petitioners, why the petitioners even then, did not immediately lodge the FIR and what was the record which was required for lodging the FIR.

24. It transpires that Sh. Mohd. Zafar was appointed in or about the year 2006 and an inquiry in that regard was initiated in the year 2011 and which culminated in November, 2014 and whereafter the notice aforesaid dated 27th April, 2015 was issued.

25. I have put to the counsel for the petitioners as to what record the petitioners required to lodge an FIR. All that the petitioners in my view required to do to lodge an FIR was to along with its request / communication to the appropriate authorities to register an FIR, attach the letter dated 27th April, 2015 aforesaid of the GNCTD. All that the petitioners were required to do was to complain that the President and Registrar who had appointed the said Sh. Mohd. Zafar had done so without advertising for the post though required to do so and inspite of knowledge of the marksheets submitted by him being forged and his admission to A&U Tibbia College having been cancelled on that ground.

26. The Parishad, including the petitioners, thus failed to comply with the direction of GNCTD, contained in the show cause notice dated 27th April, 2015 to lodge the FIR, not only till 13th April, 2015 but also inspite of being informed on 10th July, 2015 of a decision having been taken to dissolve the Parishad; even then, it only stated that it will lodge an FIR upon the records being received. However, no need for any such records, even if sent to the inquiry committee aforesaid, is shown for lodging the FIR.

27. I am therefore of the opinion that the appropriate government cannot be faulted for forming an opinion that all the members of the Parishad

including the petitioners, were by not lodging the FIR against the President and the Registrar, shielding the President and the Registrar.

28. The counsel for the petitioners has then argued that the failure even if any is not such as to qualify of a serious character. It is argued that it is at best an error on the part of the petitioners in appreciating the seriousness of the matter and / or being of the opinion that without the records which have been submitted to the appropriate government and / or the inquiry committee, the FIR could not be lodged. It is argued that the petitioners are now willing to lodge an FIR and should not be deprived of their remaining terms as members of the Parishad till 10th September, 2016.

29. I have enquired whether there are any pleadings of the appropriate government taking the action of dissolution of the Parishad, eliminating the petitioners also therefrom instead of merely removing the President and / or the Vice President of the Parishad, for any extraneous considerations or oblique motives.

30. There are none.

31. In the absence of any such pleas, this Court in exercise of jurisdiction of judicial review would not be entitled to interfere with the administrative action of the government, though under the statute aforesaid, of dissolution

of the Parishad. No fault also can be found with the formation of the opinion that failure of the Parishad to comply with the directions was of a serious character.

32. As aforesaid, the events gave rise to a reasonable cause that all the members of the Parishad were collectively shielding the President and the Registrar who in the inquiry conducted have been found to have colluded with Sh. Mohd. Zafar who is reported to have during the term of his appointment committed several irregularities also relating to the affairs of the Parishad.

33. Supreme Court, recently in *Parisons Agrotech (P) Ltd. Vs. Union of India* MANU/SC/0904/2015, dealing with judicial review sought of the Notifications issued in exercise of powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 prohibiting import of crude palm oil through the ports of Kochi and Beypore on the ground of there being no reason therefor, held that the opinion formed by the Government that allowing import of palm oil through the said ports was detrimental to the coconut growers of the State of Kerala could not be interfered with. It was reiterated that if a State action is challenged, the function of the Court is to examine the action in accordance with law and to

determine whether the executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike down the action; while doing so, the Court must remain within its self-imposed limits; the Court sits in judgment on the action of a coordinate branch of the Government; while exercising power of judicial review of administrative action, the Court is not an Appellate Authority; the Constitution does not permit the Court to direct or advise the executive or to sermonize qua any matter which under the Constitution lie within the sphere of the executive, provided the executive has not transgressed constitutional limits or statutory powers. It was further reiterated that the scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution and that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere. The correctness of the reasons which prompted the Government in decision-making taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation. The Court will not and should not substitute its own judgment for the judgment of the executive in such

matters.

34. Earlier, in *S.R. Tiwari Vs. Union of India* (2013) 6 SCC 602 it was reiterated that only if the administrative or executive action is perverse or such that no reasonable body of persons could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters would the Court in exercise of powers of judicial review be justified in interfering therewith. It was held that the Court may be justified in exercising the power of judicial review, if the impugned order suffers from *mala fide*, dishonest or corrupt practices and that the Court must keep in mind that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. The Court is devoid of the power to re-appreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and the Court cannot arrive at its own independent finding.

35. Supreme Court in *Union of India Vs. Flight Cadet Ashish Rai* (2006) 2 SCC 364, while also observing that there should be judicial restraint while making judicial review in administrative matters, laid down that

administrative action is subject to control by judicial review if, (i) the decision maker did not understand the law correctly, or (ii) the decision is irrational, namely Wednesbury unreasonableness; or (iii) if the decision suffers from procedural impropriety. The Supreme Court else in ***Rameshwar Prasad Vs. Union of India*** (2006) 2 SCC 1 has clarified that the Wednesbury principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. It was held that the decision will be said to be unreasonable in the Wednesbury sense if (a) it is based on wholly irrelevant material or wholly irrelevant consideration; or (b) it has ignored a very relevant material which it should have taken into consideration; or (c) it is so absurd that no sensible person could ever have reached to it.

36. Applying the aforesaid tests, no ground for interference in the exercise of power of judicial review with the decision of dissolution of the Parishad is made out.

37. I may record that it is the contention of the counsel for the respondent that the direction for framing of the Recruitment Rules was issued as far back as in the year 2011 but the Recruitment Rules were not framed till then. It is also his contention that the action of the Parishad of accepting the

resignation of Sh. Mohd. Zafar instead of terminating his services, as the Parishad was directed, was also a failure of a serious nature. It is contended that acceptance of resignation amounts to honourable discharge of Sh. Mohd. Zafar without any scam, enabling him to again gain appointment of a public office and if his resignation has not been accepted and his services had been terminated, he could not have applied for any other appointment.

38. There is thus no merit in the petition. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 16, 2015

‘gsr/bs’