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

+ LPA 606/2016 & C.M.No.14016/2016

VED PRAKASH TYAGI

..... Appellant

Through: Mr.Arvind K.Nigam, Sr.Adv. with
Mr.Simranjeet Singh, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Jitendra Kr.Tripathi, Adv. for R-1.
Ms.Tasneem Ahmadi, Adv. with Ms.Shubhi Kharl,
Adv. for R-2/CCIM & R-4.
Mr.Arjun Pant, Adv. for R-3.

+ W.P.(C) 10179/2016 & C.M.No.40226/2016 (*stay*)

VED PRAKASH TYAGI

..... Appellant

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CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

16.11.2016

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1. LPA No.606/2016 has been directed against an interim order passed by the learned Single Judge dated 26.10.2016 in W.P.(C) No.10179/2016 and C.M.No.40226/2016 declining to stay the election proposed to be conducted to

the two posts of EC Members (Ayurveda System) of Central Council of Indian Medicine (CCIM) and directing that the result of the election shall be subject to the outcome of the writ petition. The writ petitioner is the appellant.

2. After hearing the learned counsel for both the parties, we called for the writ petition also since we are of the view that the writ petition itself is liable to be dismissed in *limine* by invoking the doctrine of *forum conveniens*. Thus, both the LPA and writ petition are decided by this common order.

3. At the outset, we may note the facts in brief.

- i) The writ petitioner Dr. Ved Prakash Tyagi hails from Uttarakhand.
- ii) He did his Bachelor of Ayurveda, Medicine and Surgery (BAMS) from Rajasthan and got himself registered with Board of Indian Medicine, Rajasthan.
- iii) Subsequently, he opted to shift to State of Uttarakhand and obtained NOC dated 25.08.2009 from Board of Indian Medicine, Rajasthan to obtain membership from Board of Indian Medicine, Uttarakhand.
- iv) On 10.01.2011, he was granted provisional registration by the Board of Indian Medicine, Uttarakhand. Permanent Registration Certificate was issued on 11.04.2011.
- v) Being a member of the Board of Indian Medicine, Uttarakhand, he contested the elections of Central Council of Indian Medicine (CCIM), a statutory body constituted under the Indian Medicine Central Council Act, 1970 (for short 'the IMCC Act'). The

petitioner was elected as a member of CCIM on 27.08.2011 from Uttarakhand State.

- vi) Thereafter, he was elected as President of CCIM on 05.07.2012.
- vii) By order dated 09.05.2013, the petitioner's registration with the Board of Indian Medicine, Uttarakhand was cancelled on the ground that the same was obtained by playing fraud. The petitioner preferred an appeal before the State Government and the same was allowed by order dated 20.05.2013.
- viii) The Government of Uttarakhand filed W.P.No.1149/2013 before the High Court of Uttarakhand.
- ix) By order dated 30.05.2013, the writ petition was disposed of and the matter was remanded to the State Government.
- x) By order dated 19.07.2013, the Government of Uttarakhand dismissed the appeal.
- xi) Against the said order, the petitioner filed W.P. (M/S) No.1754/2013 in the High Court of Uttarakhand.
- xii) The learned Single Judge of Uttarakhand High Court allowed W.P. (M/S) No.1754/2013 by order dated 08.12.2015 and set aside the impugned order holding that the petitioner is a validly registered member with the Board of Indian Medicine, Uttarakhand. Accordingly, the learned Single Judge held that the cancellation of registration of the petitioner was illegal.

Consequently, the impugned order dated 09.05.2013 passed by the Board of Indian Medicine, Uttarakhand as well as the consequential orders including the order of Government of India dated 27.07.2013 were set aside.

- xiii) In the interregnum, fresh elections were held to the vacancy that arose to the CCIM Member from Uttarakhand and Dr.Shivani Tyagi was duly elected. Similarly, elections were held to the post of President and Dr.Vanitha Murali Kumar was elected.
- xiv) Pursuant to the order dated 08.12.2015 in W.P. (M/S) No.1754/2013, the Government of India passed an order dated 15.03.2016, restoring the status of the petitioner as a member of CCIM from Uttarakhand. The election of Dr.Vanitha Murali Kumar was also set aside.
- xv) Thus, the petitioner has been restored to the office of the President of CCIM on the basis of order dated 15.03.2016 of the Government of India.
- xvi) However, the order dated 08.12.2015 in W.P. (M/S) No.1754/2013 came to be challenged by filing four Special Appeals by different persons including CCIM and Dr.Vanitha Murali Kumar.
- xvii) The Division Bench disposed of the said appeals by judgment dated 12.07.2016 upholding the conclusion of the learned Single Judge that cancellation of registration of the petitioner from the

rolls of Uttarakhand Board was illegal. However, the Division Bench held that quashing of all consequential orders is not proper in view of the subsequent events that have taken place in the interregnum. Thus, it was made clear by the Division Bench that the petitioner cannot automatically become President of CCIM for two reasons, namely, (a) that the term of the petitioner's election as a member of CCIM from Uttarakhand on 27.08.2011 expired on 26.08.2016, and (b) that his term as President of CCIM also came to an end on 26.08.2016.

- xviii) Accordingly, the Division Bench made it clear that in the first step the petitioner has to be elected as Member, CCIM. It was also directed that the charge of the President should be given to the Vice President in accordance with CCIM (General) Regulations, 1976 for the functioning of CCIM till a duly elected President takes charge.
- xix) Against the said order, the petitioner preferred SLP which was disposed of by the Supreme Court by order dated 08.08.2016 with consent of both the parties holding that the election of member of CCIM from State of Uttarakhand will be held on 26.08.2016 and directing that the result be declared by 27.08.2016. It was made clear by the Supreme Court that the functioning of the petitioner as President shall be upto 27.08.2016 only.

- xx) Union of India filed an application before the Supreme Court for extension of time for holding the elections and accordingly by order dated 22.08.2016 the time was extended upto 07.10.2016. However, it was reiterated that the functioning of the petitioner as President of CCIM shall be upto 27.08.2016.
- xxi) In terms of the orders of the Supreme Court, Government of India vide Office Order dated 06.10.2016 requested the Vice President Dr.V.Arunachalam/respondent No.3 herein to take charge of the President.
- xxii) Accordingly, respondent No.3 took charge and EC Meeting was held on 08.10.2016 wherein it was decided vide Agenda Item No.17 that the elections for two EC members of Ayurveda System of CCIM (which would fall vacant after 28.10.2016) would be held on 01.11.2016.

4. The petitioner filed W.P.(C) No.10179/2016 on 24.10.2016 in this Court seeking to declare the following orders as illegal and to quash the same.

- (a) Order dated 06.10.2016 passed by the Government of India, Ministry of Aayush directing the Respondent No.3 herein to take charge of the President of CCIM, New Delhi with immediate effect till a duly elected President takes charge.

- (b) Consequential Circular dated 06.10.2016 issued by CCIM, New Delhi placing on record that the Respondent No.3 has assumed the charge of President on 06.10.2016.
- (c) Circular dated 06.10.2016 issued by CCIM, New Delhi convening an urgent meeting of Executive Committee on 08.10.2016.
- (d) Minutes of the Meeting of the Executive Committee dated 08.10.2016 presided over by the Respondent No.3, particularly Agenda Item No.17 wherein it was *inter alia* decided that the election for two EC Members of Ayurveda will be held on 01.11.2016.

5. Along with W.P.(C) No.10179/2016, the petitioner also filed C.M.No.40226/2016 seeking stay of impugned orders. On 26.10.2016, the learned Single Judge while directing to list the writ petition on 07.02.2017 declined to stay the election observing as under:-

“5. It is stated that the process for conducting elections to the two posts of EC Member (Ayurveda System) to be held on 01.11.2016, has already been set into motion in terms of the decision of the Executive Committee of the respondent No.2 taken in its meeting held on 08.10.2016. In these circumstances, the Court declines to stay the election. It is however, directed that the results of the election to be held on 01.11.2016 for the two posts of EC Members (Ayurveda System), shall be subject to the outcome of the present petition.”

6. Assailing the said order, the petitioner filed LPA No.606/2016.

7. It is submitted by Sh.Arvind Nigam, the learned Senior Counsel appearing for the appellant/writ petitioner that in the light of Section 7(1) of the IMCC Act, 1970, the appellant/writ petitioner who was elected as President of CCIM on 05.07.2012 is entitled to continue as the President of CCIM upto 05.07.2017 and, therefore, the order dated 06.10.2016 passed by the Government of India is illegal and is liable to be stayed.

8. It is also contended that in view of the judgment dated 24.02.2012 of the Supreme Court in *K.B.Nagur Vs. Union of India & Ors.*; 2012 (4) SCC 483, the term of the appellant/writ petitioner as Member & President, CCIM is extendable for a further period of three months from 27.08.2016, i.e., till 27.11.2016 and thus, there is no vacancy to which the election can be held.

9. On the other hand, it is submitted by the learned counsel appearing for CCIM that in view of the order of the Supreme Court, the appellant/petitioner is not entitled to continue beyond 27.08.2016.

10. The learned counsel for both the parties sought to raise various other grounds to substantiate their respective claims. However, we are of the view that the adequate jurisdiction lies with the High Court of Uttarakhand to deal satisfactorily with the case on hand. Though, there is no dispute about the fact that this Court has territorial jurisdiction to deal with this petition, keeping in view the chequered history of the case, we are of the opinion that this petition does not deserve consideration by this Court in exercise of the discretionary jurisdiction conferred under Article 226 of the Constitution of India.

11. The reasons for the above conclusion are as under:

- i) The territorial jurisdiction to entertain a writ petition is based on cause of action which means bundle of facts which the petitioner must prove, if traversed to entitle him a judgment in his favour. In view of the fact that the orders impugned in the present petition are passed by the authorities at New Delhi, a part of cause of action has undoubtedly arisen within the territorial jurisdiction of this Court. However, a part of cause of action has also arisen within the territorial limits of State of Uttarakhand since the dispute relates to filling up of the vacancy to EC Member from Uttarakhand State, i.e., amongst the persons registered with Board of Indian Medicine, Uttarakhand.
- ii) Though it is open to the petitioner, who is the *dominus litis* to have his *forum conveniens*, having regard to the chequered history of the case resulting in various orders passed by the High Court of Uttarakhand from time to time and more particularly the dispute went up to the Supreme Court and the conclusion of the High Court of Uttarakhand that the petitioner cannot automatically be restored to the office of President since his term of EC Member stood expired on 26.08.2016 was upheld by the Supreme Court, it appears to us that the petitioner should not have approached this Court for the reliefs sought. We also found that the reliefs sought in the present petition are more or less in the nature of implementation of the orders passed by the High Court of

Uttarakhand and the Supreme Court. Hence, the mere fact that the impugned orders were passed by the respondents situated within the territorial jurisdiction of this Court, in our considered opinion, cannot be a determining factor to compel this Court to entertain the matter.

- iii) The law is well settled that the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of *forum conveniens* and that the question whether or not the cause of action wholly or in part for filing the writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of proceedings under Article 226 of the Constitution of India. It was also made clear by the Larger Bench of this Court in *M/s Sterling Agro Industries Ltd. v. Union of India & Ors.*; **ILR (2011) VI Delhi 729** that the doctrine of *forum conveniens* and the nature of cause of action are required to be scrutinized while entertaining a writ petition depending upon the factual matrix of each case.
- iv) As could be seen, the facts pleaded in the present case have a nexus with the *lis* involved in the cases adjudicated or pending adjudication before the High Court of Uttarakhand. We have observed that one Dr.Ramakant has filed Writ Petition (M/S) No.2537/2016 in the High Court of Uttarakhand at Nainital alleging that fresh registration was never granted to the petitioner

herein by the Uttarakhand Board as claimed by him in the Special Appeals which were decided by the Division Bench on 12.07.2016. The said writ petition is pending and the interim order passed by the High Court of Uttarakhand that the result of the election shall not be declared till the next date of hearing has been in operation.

- v) In the totality of facts and circumstances of the case on hand, we are of the view that the situs of the office of the respondents whose orders are impugned alone cannot be a determinative factor for invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

12. For the aforesaid reasons, we refuse to exercise the discretionary jurisdiction under Article 226 of the Constitution of India.

13. Accordingly, the writ petition as well as LPA shall stand dismissed leaving it open to the writ petitioner/appellant to file a fresh petition before the appropriate forum.

14. The date fixed in W.P.(C) No.10179/2016 shall stand cancelled.

CHIEF JUSTICE

NOVEMBER 16, 2016/ 'anb'

SANGITA DHINGRA SEHGAL, J