

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3406 of 2017

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Tabrez Akhtar son of Late Mohd. Akhtar Lari Resident of New Azimabad, PS/PO
Sultanganj, District Patna.

.... Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Ayush, Ayush Bhawan, B
- Block, GPO Complex, INA, New Delhi.
2. The State of Bihar through its Principal Secretary, Dept. of Health and Family
Welfare, Govt. of Bihar, Patna.
3. Central Council of Indian Medicine, 61-65, Institutional Area, Janakpuri, New
Delhi through its Secretary.
4. The Director Deshi Chikitsa, Dept. of Health and Family Welfare, Govt. of
Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. K. K. Sinha, Advocate
For the UOI	:	Mr. S. D. Sanjay, Addl. S.G. with Mr. Sujeet Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 12-04-2017

Heard learned counsel for the petitioner, Mr. S. D. Sanjay,
learned Additional Solicitor General, assisted by Mr. Sujeet Kumar
Sinha, learned counsel for the Union of India, learned counsel for the
State and learned counsel for the respondent no. 4.

2. The petitioner has moved the Court for the following
reliefs:

“ That in this writ application the above



named Petitioner pray for issuance of an appropriate writ/order/direction commanding Respondents to constitute central council in terms of section 3 of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the Act) strictly in accordance with the provisions of the Act. The Petitioner further pray that until such time the Central Council is not constituted in accordance with the section 3 of the Act, in terms of section 7 thereof the Petitioner may be directed to continue as Members of the Central Council till their successors have been duly elected. Petitioner further pray for a direction restraining the Respondents from removing the Petitioner from the Membership of the Central Council which has been constituted in accordance with the section 3 of the Act.”

3. Earlier, by order dated 09.03.2017, the Court, by way of an interim measure, had directed that if the vacancy of the petitioner has not been filled up in accordance with the statutory provisions, he shall continue to be a Member of the Central Council of Indian Medicine and shall be entitled to perform all functions associated with the said post, till his successor takes charge of the office. It is not in dispute that the term of the petitioner as a Member of Central Council of Indian Medicine came to an end on 29.09.2016, i.e., after completion of five years from the gazette notification dated 30.09.2011 in terms of Section 7 of the Indian Medicine Central



Council Act, 1970 (hereinafter referred to as the 'Act').

4. Mr. S. D. Sanjay, learned Additional Solicitor General pointed out that the Court could not be assisted with regard to the fact that the Hon'ble Supreme Court in the case of **K. B. Nagur, M.D. (Ayu.) v. Union of India** reported as **AIR 2012 Supreme Court 1774** has categorically held that no elected Member, under any of the three systems 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. He submitted that the judgment was with regard to Section 7 of the Act and the prayer was to strike down and quash the said clause of Section 7 of the Act reading as "or until his successor shall have been duly elected or nominated, whichever is longer" as contrary to the very Act, unconstitutional and undemocratic and violative of Articles 14 and 16 of the Constitution of India. Learned counsel submitted that the ratio of aforesaid judgment of the Hon'ble Supreme Court squarely applies to the present case also and thus, the petitioner cannot be allowed to continue beyond 29.12.2016.

5. Learned counsel for the petitioner submitted that in the case before the Hon'ble Supreme Court, they were not heard and, thus, the same is not binding on the petitioner.

6. Having considered the rival contentions, the Court finds



no merit in the writ petition. The Court is not required to go into the merits once the Hon'ble Supreme Court has already considered the issue on its merits in the aforesaid case of **K. B. Nagur, M.D. (Ayu.)** (supra).

7. That being the position, the principle of law having been laid down that no elected member shall hold office of the President, Vice President or Member beyond a period of three months from the expiry of their term shall govern the issue involved in the present case also.

8. For the reasons aforesaid, the petitioner cannot continue as a Member of the Central Council of Indian Medicine beyond 29.12.2016.

9. Accordingly, the writ petition stands dismissed.

10. It goes without saying that whatever cooperation or action is required for election of Members to the Central Council of Indian Medicine from the State of Bihar, by the State authorities, the same shall be complied with expeditiously.

11. The interim order dated 09.03.2017 stands vacated.

(Ahsanuddin Amanullah, J)

Anjani/-

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