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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.02.2017

DELIVERED ON: 17.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) No. 73 of 2017

and

C.M.P. (MD) No. 634 of 2017

The Registrar,
The Tamil Nadu Medical Council,
New No. 914, Old no. 569,
Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.

.. Appellant
3rd respondent

Vs.

1. K. Senthil

.. 1st respondent /
Writ petitioner

2. The State of Tamil Nadu,
rep. by its Principal Secretary,
Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.

3. The Tamil Nadu Medical Council,
rep. by its Secretary,
New No. 914, Old No. 569,
Poonamallee High Road,
Arumbakkam, Chennai - 600 106.

.. Respondents 2 & 3/
Respondents 1 & 2

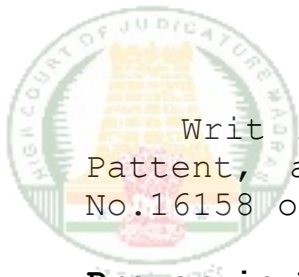
4. The Vice President,
The Tamil Nadu Medical Council,
New No. 914, Old No. 569,
Poonamallee High Road,
Arumbakkam, Chennai - 600 106.

5. M. S. Ashraf

.. Respondents 4 & 5/
Respondents 4 & 5

(R2 to R5 are formal parties and

<https://hcservices.ecourts.gov.in/hcservices/vices-ecourts.gov.in/hcservices/>
no relief is sought against them)



Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 11.01.2017, made in W.P.(MD). No.16158 of 2016 by a learned Single Judge of this Court.

Prayer in WP(MD). 16158/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned resolution of the 3rd respondent Council dated 17.8.2016 and the consequential proceeding issued by the 3rd respondent Registrar in Ref.No.TNMC/G 705/2016 DATED 17.08.2016 quash the same.

For appellant : Mr.Veera Kathiravan,
Senior Counsel for
M/s.Veera Associates

For 1st respondent : Mr.Isaac Mohanlal,
Senior Counsel for
Mr.T.Chibi Chakraborty

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

The third respondent in the writ petition viz., the Registrar, Tamil Nadu Medical Council, Chennai, is the appellant herein. He has filed the present appeal as against the order, dated 11.01.2017, passed by a learned Single Judge of this Court in the writ petition, whereby and whereunder the learned Single Judge quashed the resolution passed by the second respondent Council, dated 17.08.2016, accepting the alleged resignation of the first respondent / writ petitioner and the consequential proceedings issued by the appellant / third respondent dated 17.08.2016.

2.0. The case of the first respondent/ writ petitioner before the learned Single Judge is that he was appointed as Assistant Surgeon in the Tamil Nadu Medical Services on 21.11.1993. After serving various places under various capacities, he is now working as Professor in the Department of Diabetology at Madurai Medical College, Madurai. He is also associated with several welfare activities concerning the patients, doctors and the public. He was holding several offices in the organisations. At present, he holds the Office as the State President of the Tamil Nadu Government Doctors Association, which is a registered society and on 15.02.2016 he was also elected as the President of the Tamil Nadu Medical Council for a period of two years. The Tamil Nadu Medical Council is a statutory body established under the provisions of the Tamil Nadu Medical Registration Act, 1914 and it is the State Body of the Medical Council of India. It maintains the Registry of the Doctors practising in the State and also acts as the



Disciplinary authority for all the Doctors in the State and monitors them for their complete adherence to medical ethics. The said council is running by the President, assisted by the Vice President, the Registrar and the Executive Committee members. The Council has seven elected members from its registered medical practitioners and three other members nominated by the State Government. The President, Vice President and Executive Committee members are elected amongst these ten members as per the Act. The Registrar acts as the Secretary of the Council.

2.1. While the first respondent / petitioner holding the post of President, due to certain understanding among few members of the Council, he handed over an undated signed letter to one of the Executive Committee members viz., the 5th respondent herein stating that he would tender his resignation from the post of President of the Tamil Nadu Medical Council. Later, the understanding among the members failed and as such, the first respondent / petitioner has decided not to go ahead with the proposed resignation. Even after repeated request, the fifth respondent did not return the undated letter. Apprehending that the said undated letter would be used without his knowledge and against his will, the first respondent / petitioner had sent a representation to the appellant as well as respondents 2 and 4 through email as well as Speed Post on 13.08.2016 requesting not to entertain and accept any such mischievous letter in his name from anyone including the 5th respondent herein and also expressing his wish to continue and complete his full term as the President of the Council. The said letter was acknowledged by the third respondent through his reply email on 16.08.2016.

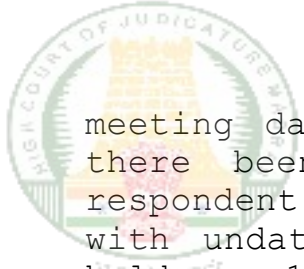
2.2. While so, he came to know that the 5th respondent had submitted his undated signed letter to the appellant/third respondent - Registrar on 12.08.2016 itself and the same had been forwarded to the 4th respondent - Vice President for taking appropriate action. The 4th respondent had assumed charge as the President (i/c) from that date onwards and had directed the appellant / 3rd respondent Registrar to call for an emergency executive meeting on 17.08.2016 at 10.00 a.m. However, no information was given to the first respondent / petitioner in this regard. In the Emergency Executive Council meeting held on 17.08.2016, it has been resolved to accept the resignation letter, dated 12.08.2016 given by the first respondent / petitioner from the post of President of the Council and it was further resolved that the 4th respondent / Vice President would continue as the President (i/c) and also called for a Special Business Meeting on 06.09.2016 for electing new President. Subsequently, the above said resolutions of the Council was communicated to the 2nd respondent herein by the appellant / 3rd respondent. Challenging the resolutions, the first respondent has filed the writ petition.



3. When the matter came up before the learned Single Judge of this Court on 29.08.2016, the learned Single Judge directed the Council to defer the meeting scheduled to be held on 06.09.2016 and thereafter, issued notice to the respondents 1 to 5. After receipt of notice, the third respondent herein and the appellant had filed counter affidavit opposing the prayer of the first respondent. The learned Single Judge, after hearing both sides, allowed the writ petition by quashing the resolution passed by the Council. Aggrieved over the same, the appellant herein has filed the present writ appeal.

4.0. The learned senior counsel for the appellant submitted that the third respondent herein viz., the Tamil Nadu Medical Council is a statutory body established under the Tamil Nadu Medical Registration Act, 1914. The said council established for the registration of all medical practitioners in the State of Tamil Nadu. The first respondent was elected as the President of the Council on 15.02.2016 for a period of two years. While so, on 12.08.2016 he submitted his undated letter of resignation to the third respondent. As per Rule 1(1) of the Rules for the Election of President of the Madras Medical Council, the President shall hold office as such, unless he sooner resigns, for a term of two years from the date of his election." Further as per Section 8(1) of the the Tamil Nadu Medical Registration Act, as and when a member send his resignation in writing, he shall be deemed to have vacated his seat. Since the first respondent resigns the post of President on 12.08.2016, it is deemed that the said person demitted the office from that day onwards and there is no rule which contemplates that such resignation should be accepted and the person making such resignation had the right to revoke the same well before its acceptance. A mere tendering of resignation is suffice for demitting the Office and when the first respondent himself admitted that he resigned the post of President, the question of revocation does not arise at all. Though there is no separate provision for the resignation of the President, the learned Single Judge has erroneously held that Section 8(1) of the Tamil Nadu Medical Registration Act relating to the resignation of the members of the Council is not applicable to the post of President. Hence, the Council by resolution dated 17.08.2016 recorded the resignation of the first respondent and decided to conduct a meeting for election of a President on 06.09.2016.

4.1 The learned counsel for the appellant further submitted that on 17.08.2016, totally six members were present, apart from two special invites, while recording the resignation sent by the first respondent. However, in the minutes, it was wrongly recorded as if the resignation was accepted. Actually, there is no need for any such acceptance, because the first respondent already demitted the post of President which would amount to demitting Office. But, the learned Single Judge, by giving significance to the word "accepted" mentioned in the minutes of



meeting dated 17.08.2016, rendered a finding that if really had there been any meeting, the revocation letter of the first respondent also would have been placed in the same meeting along with undated letter of resignation. The purpose of the meeting held on 17.08.2016 was mainly to go for election of the new President. Incidentally, the letter of resignation was placed in the meeting and recorded as if the resignation letter of the first respondent is "accepted", though there is no need for accepting the resignation by virtue of Rule 1(1) of the Election of President of the Madras Medical Council. Therefore, the question of placing the letter of revocation sent by the first respondent in the meeting of the council does not arise. But the learned Single Judge without considering this aspect allowed the writ petition. Thus, he sought for quashment of the order of the learned Single Judge.

5. Countering the submissions made by the learned counsel for the appellant, the learned counsel appearing for the first respondent/writ petitioner submitted that it is incorrect to state that as soon as the President sends a resignation letter, it should be deemed that the said person demitted the office. In this regard, the learned senior counsel appearing for the first respondent by inviting the attention of this Court to Section 8(1) of the Tamil Nadu Medical Registration Act, submitted that as per the said Rule, only if a member sent a resignation letter, it would amount to vacate the seat. So far as the post of President is concerned, the same will not apply. In the instant case, though the undated resignation letter was received by the appellant on 12.08.2016, the first respondent on the very same day wrote another letter stating that he is not tendering any resignation letter and he had expressed his wish to continue and complete the full term as President of the Council. But, inspite of the same, the so called executive committee meeting was held on 17.08.2016 in which they have categorically stated that the Executive committee resolves to accept the resignation of the first respondent. When it is stated in the minutes that the executive committee resolved to accept the resignation, now the appellant cannot turn back and say the words "Executive Committee" and "accepted" were wrongly entered in the minutes. Further, when the appellant had chosen to place the resignation letter in the Emergency Executive Committee meeting held on 17.08.2016, he ought to have placed the subsequent letter of the first respondent by which he requested not to act on the earlier letter, before the Committee. More over, for holding Executive Committee meeting, eight days advance notice ought to have been issued as per Clause 29 of the By-laws. But, the appellant has failed to do so. The first respondent is also entitled to notice, inasmuch as he would continue to be a member. No notice was issued before convening the meeting on 17.08.2016. Since the resolution was passed not in accordance with the Rules, the learned Single Judge has quashed the impugned resolutions. Thus, he sought for dismissal of the appeal.



6. We have given our anxious considerations to the rival submissions made on either side. We have also perused the records carefully.

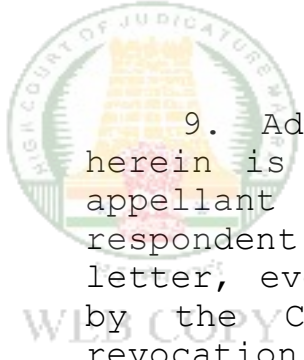
7. Though very many contentions have been raised with regard to factual aspects i.e., sending of resignation letter and acceptance, the main issue involved in this appeal is as to whether merely sending a resignation letter by the President would amount to demitting the Office of the President. The learned counsel for the appellant relying upon section 8(1) of the Tamil Nadu Medical Registration Act submitted that as and when a member send his resignation in writing, he shall be deemed to have vacated his seat and the same is applicable to the post of President also. According to the first respondent, the said proviso would apply only to the members and not the President.

8. For better appreciation, the above said section is extracted hereunder:

"8.A member of the council shall be deemed to have vacated his seat:

(1) on sending his resignation in writing to the President or Registrar."

A bare perusal of the above provision makes it clear that the same would be applicable to a member and not the President, because the President cannot send his resignation to himself. But, according to the appellant, as per Rule 1(1) of the Rules for the Election of President of the Madras Medical Council, "the President shall hold office as such, unless he sooner resigns, for a term of two years from the date of his election" and hence, the President cannot hold Office after he resigns. At this juncture, a pertinent question arises as to whether mere sending of resignation letter by the President itself is sufficient to demit the post of the President or acceptance of the letter of resignation by a competent authority is necessary. Since the Act is silent in this regard and also considering the fact that the post of President is the principal one under the Act, the learned Single Judge, by relying upon various decisions of the Hon'ble Supreme court, has rightly held that as per the General Principle, "when a functionary who cannot, under the conditions of his service / or office, by his own unilateral act of tendering resignation, gives up his service / or office, normally the tender of resignation becomes effective and his service / or office tenure gets terminated only when it is accepted by the competent authority." "In other words, only after the acceptance of the resignation, an officer would not be entitled to withdraw the resignation and that before acceptance, the offer for resignation



9. Admittedly, in this case, though the first respondent herein is stated to be submitted his resignation letter to the appellant herein on 12.08.2016, on the very next day, the first respondent has sent a letter seeking revocation of the resignation letter, even before the acceptance of the said resignation letter by the Council. But, the appellant, without placing the revocation letter before the Council, has placed only resignation letter of the first respondent and thereby caused to deter the chances of getting revocation of the resignation letter. More over, in the minutes of the meeting dated 17.08.2016, it has been stated that it is resolved to accept the resignation of the first respondent. Though the learned counsel for the appellant submitted that in the resolution, the word "acceptance" was wrongly mentioned instead of recording of resignation, this Court is of the view that based on the general principle only, such word has been coined in the resolution.

10. More over, in the minutes of the meeting, it has been clearly stated that it is an Executive Committee Meeting, for which 8 days' prior notice is necessary as per Clause 29 of the By-laws. But, the same has not been followed by the appellant. According to the learned counsel for the appellant, it was wrongly mentioned as the Executive Committee Meeting, but it was only an extraordinary meeting of the Council. As per clause 1(2) of the By-laws, for conducting an extraordinary meeting of the Council 15 days' prior notice is necessary. But, the same also has not been followed by the appellant. It appears that the sole intention of conduct of meeting is to hurriedly make the first respondent to send out of the post of President. But, that should be legally. Here, in this case, viewing from any angle, the first respondent has been removed from the Office not in accordance with law. Therefore, the learned Single Judge has set aside the impugned orders, in which we do not find any infirmity or illegality. Thus, this writ appeal is liable to be dismissed.

11. In the result, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar



To
1. The Principal Secretary,
The State of Tamil Nadu,
Department of Health and Family Welfare,
Fort St. George,
Chennai - 600 009.

+1cc to M/S Veera Associates, Advocate, Sr No.1566
+1cc to M/S T.Cibi Chakraborty, Advocate, Sr No.15787

Pre-Delivery Judgment made in
Writ Appeal (MD) No.73 of 2017
17.03.2017

gcg
MS/SV.MMS/SAR.3/27.03.2017/8P.4C