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

+ W.P.(C) 9599/2016

MASHIH-UI-HAKEEM AJMAL KHAN MEMORIAL
FOUNDATION Petitioner

Through: Mr. A.J. Khan, Advocate

versus

GOVT. OF NCT OF DELHI & ANR Respondents
Through: Mr. Ankur Chhibber, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **27.01.2017**

1. The present petition has been filed by the petitioner praying *inter alia* for directions to the respondents/GNCTD to hold elections in respect of respondent No.2/Bhartiya Chikitsa Parisad by physical direct secret ballot and ensure that no postal ballot is permitted except in special cases, where such a request is made.
2. On the last date of hearing, counsel for the petitioner was directed to place on record documents to substantiate the averments made in the petition to the effect that the Executive Body of the respondent No.2 had been dissolved and an Administrator appointed.
3. Counsel for the petitioner states that he has filed the relevant documents on an affidavit. The said affidavit is, however, not on record, though a copy thereof has been furnished to the counsel for the respondent

No.1/GNCTD.

4. Learned counsel for the petitioner hands over a copy of the additional affidavit filed in the Registry on 24.01.2017, alongwith a set of documents and draws the attention of the Court to the order dated 16.07.2015 passed by the Special Secretary (Health and Family Welfare), Govt. of NCT of Delhi, whereunder in exercise of powers conferred on it under Section 32 of the Delhi Bhartiya Chikitsa Parishad Act, 1998, the respondent No.1 had dissolved the Executive Body of the respondent No.2 with immediate effect and appointed the Director, Indian System of Medicine and Homoeopathy, GNCTD as the Administrator.

5. Mr. Chhibber, learned counsel for the respondent No.1/GNCTD submits that the Lieutenant Governor, Govt. of NCT of Delhi, being the competent authority, had not given his approval to the said order as the Delhi Government had not forwarded the file in question to his office. The said file was forwarded only in middle of September, 2016 and necessary approvals have been given by the competent authority as recently as on 15.01.2017. He submits that now steps are being taken by the respondents to hold a fresh election of the Executive Body of the respondent No.2.

6. Further, learned counsel for the respondents draws the attention of the Court to sub-rule 13(a) of Rule 2 of the Delhi Bhartiya Chikitsa Parishad Rules, which refers to “Contested Election” and prescribes that where there are more contesting candidates than the existing vacancies, the voting shall be by means of postal ballot, or by personal voting within the stipulated time and date. He submits that now it is for the Returning Officer to take a

decision as to whether the voting shall be conducted by means of postal ballots or by personal voting but no such directions can be sought by the petitioner in the present petition.

7. Learned counsel for the petitioner states that as per the past practice, voting is conducted by postal ballot and it is for this reason that the present petition has been filed.

8. This Court is of the opinion that the present petition is premature as the Returning Officer has yet to be appointed to conduct the elections. In any event, the Rules contemplate two modes of voting, i.e., by means of postal ballot or by personal voting and either of the two options can be stipulated for conducting the elections.

9. The present petition is not only premature, the relief prayed for is untenable in view of the rule position. If the petitioner has a grievance, it is for him to seek amendment of the Rules as per the prescribed procedure or to approach the Returning Officer for relief as and when a decision is taken by him in this regard.

10. In these facts and circumstances, this Court declines to exercise its powers of judicial review. The petition is disposed of.

HIMA KOHLI, J

JANUARY 27, 2017

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