

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.4442 of 2018
and
W.M.P.Nos.5449 and 5450 of 2018

Dr.P.Balakrishnan

.. Petitioner

Vs.

1. The State of Tamilnadu,
rep. By its Principal Secretary,
Department of Health and Family Welfare,
Secretariat,
Chennai.
2. Tamil Nadu Medical Council,
rep. By its Registrar,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.
3. The Administrator/Election Officer,
Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.

4. Dr.Senthil
5. Dr.Jeyasingh
6. Dr.Thiyagarajan
7. Dr.Dhalapathy
8. Dr.Sadagopan
9. Dr.Ponnuraj
10. Dr.R.V.S.Surendran

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Respondents 4 to 10 are
having at Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.

.. Respondents

Writ petition filed under Article 226 of the constitution of India to issue a writ of Mandamus to direct the 1st and 3rd respondents to conduct a fresh election of the Tamil Nadu Medical Council member election 2017 to 2018 by following the rules as stipulated therein under Tamilnadu Medical Council rules.

For Petitioner : Mr.V.Prakash,
Senior counsel
Mr.C.Kanagaraj

For Respondents: Mr.R.Govindasamy,
Special Government Pleader for R1
Mr.G.Sankaran, for R2
Mr.P.Wilson,
Senior counsel for
Mr.Richardson Wilson,
for R4, R6 to R10
Mr.D.Veerasekaran for R5.

O R D E R

Mr.R.Govindasamy, learned Special Government Pleader takes notice for the first respondent, Mr.G.Sankaran, learned counsel takes notice for the second respondent, Mr.Richardson Wilson, learned counsel takes notice for the fourth, sixth to tenth respondents and Mr.D.Veerasekaran, learned counsel takes notice for the fifth respondent. By consent of the parties, the main writ petition itself is taken up for final disposal.

2. The petitioner seeks for a Mandamus directing the first and third respondents to conduct a fresh election of the Tamilnadu Medical Council Member Election 2017-2018 by following the Rules as stipulated therein.

3. Mr.V.Prakash, learned senior counsel for the petitioner after inviting the attention of this Court to various provisions under the Tamilnadu Medical Registration Act, submitted that the election conducted for the Tamilnadu Medical Council Members was not by strictly following those statutory procedures. Therefore, he contended that the first and third respondents should be directed to conduct a fresh election.

4. On the other hand, Mr.P.Wilson, learned senior counsel appearing for the 4th, 6th to 10th respondents as well as the learned counsel appearing for the 1st and 2nd respondent submitted that the election was already conducted and the result was also declared and such declaration was also published in the Government Gazette on 21.02.2018. Learned senior counsel further submitted that the elected office bearers have taken charge on 22.02.2018. Therefore, he contended that the very prayer in the Writ petition itself is not maintainable.

5. Learned senior counsel for the petitioner submitted that though the present writ petition is filed seeking for Mandamus as stated supra in view of a remedy provided under Section 17 of the said Act, the petitioner will approach the Government and file appropriate petition challenging the election as provided under the said provision and till an order is passed on the petitioner's complaint/ petition by the first respondent, the ballot papers as well as the election records may be directed to be kept in safe custody of the Administrator/Election Officer.

6. Heard both sides.

7. It is seen that this Court, by an order passed in W.P.No.15073/2017 dated 28.06.2017, appointed a retired Judge of this Court as an Administrator entrusting him with certain powers stipulated in the said order which include conducting of election to the Tamilnadu Medical Council. Thus, as per the said order, the learned Administrator/ Election Officer conducted the election and declared the results on 16.12.2017. Now, it is stated before this Court that such declaration of result was also published in the Tamilnadu Government Gazette on 21.02.2018 and that the elected office bearers have also assumed office on 22.02.2018. When such being the factual position, I do not think that the petitioner can maintain the present writ petition with the relief as stated supra. If at all the petitioner is aggrieved against the election, it is for him to challenge the same in a manner known to law, at any event, not by maintaining the present writ petition, that too, with the present relief. No doubt, the learned senior counsel for the petitioner sought to rely upon Section 17 of the said Act contemplating that the Government may of their own motion or on objection declare any election that has been held to be void on account of corrupt practice or any other sufficient cause. If the petitioner is willing to take recourse to remedy under such provision of law, it is open to him to do so. Therefore, the present writ petition, with the relief as stated supra, cannot be entertained.

8. The learned senior counsel for the petitioner states that such application/ petition will be filed before the

Government namely, the first respondent within a period of one week. Needless to say, if any such petition is filed, it is for the first respondent to consider and decide the same in accordance with law, as this Court, at this stage, is not expressing any view on the merits of the contention of the petitioner as well as the other parties who got selected. Needless to say that since the petitioner has stated before this Court that he is going to challenge the election before the first respondent Government under Section 17 of the said Act, the learned Administrator/ Election Officer shall retain the election records and the ballot papers in safe custody till an order is passed by the first respondent on the petition filed by the petitioner. It is stated by the learned counsel appearing for the respondents that the entire election records as well as the ballot papers are in the custody of the 3rd respondent in a room which is under lock and seal. The said statement is recorded. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

vsi

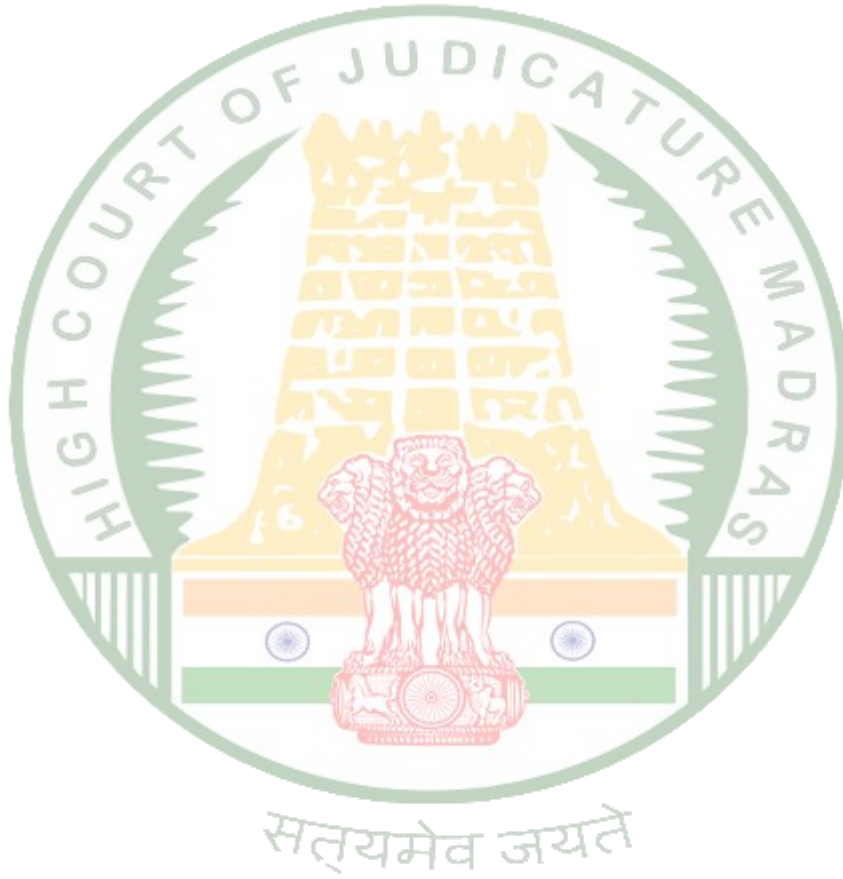
To

1. The Principal Secretary,
Department of Health and Family Welfare,
Secretariat,
Chennai.
2. The Registrar,
Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.
3. The Administrator/Election Officer,
Tamil Nadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai - 600 106.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.16064
+1cc to Mr.D.Veerasekaran, Advocate, S.R.No.15798
+1cc to Mr.Richardson Wilson, Advocate, S.R.No.15851
+1cc to Mr.C.Kanagaraj Associates, Advocate, S.R.No.15948
+1cc to the Government Pleader, S.R.No.16275

W.P.No.4442 of 2018

RRK(05/03/2018)



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