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

Date of Decision: 26th February, 2018

+ **W.P.(C) 1204/2018 & CM Nos.5027-28/2018**

DR MIRDUL KUMAR SAHANI Petitioner

Through: Mr.Rajiv Bansal, Sr. Adv. with
Mr.Rudreshwar Singh,
Mr.Saurabh Jain, MR.Sumeet
Kr. Singh & Mr.Abhimanyu
Kapoor, Advs.

versus

**THE UNION OF INDIA THROUGH ITS SECRETARY,
DEPARTMENT OF AYUSH, GOVERNMENT OF INDIA,
NEW DELHI & ORS** Respondents

Through: Mr.Dev P. Bhardwaj, CGSC
with Mr.Satya Prakash Singh,
Advs. for UOI.
Mr.Kundan K. Mishra &
Mr.Ajay Kumar, Adv. for R-3.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner, who was elected as a Member of the Central Council of Homeopathy pursuant to the results of the elections of the Council declared on 17.08.2017, has filed the present petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing of order dated 15.01.2018 vide which the respondent No.1 has based on an inquiry, declared the election to the Council, as a

result whereof the petitioner and three other persons stood elected as members of the Council, as void and it has further been ordered that, a fresh election be conducted in the State of Bihar as per the provisions of Homeopathy Central Council Act, 1973 and Homeopathy Central Council (Election) Rules, 1975.

2. In support of his challenge to the impugned order dated 15.01.2018, Mr.Bansal, learned senior counsel for the petitioner has raised various contentions including the plea that the impugned order has been passed without giving any notice to any of the elected persons. On this issue, this Court had granted an opportunity to the learned counsel for the respondent to obtain instructions. Today, Mr.Bhardwaj submits that he is unable to dispute the fact that before passing the impugned order, no notice had been given to any of the elected Members and on the other hand, the impugned order was passed by relying on the complaints and representations received from the aggrieved parties.

3. In view of the aforesaid undisputed position, it is apparent that the impugned order was passed not only in the breach of principles of natural justice, but also in violation of the Rule 28 of the Homeopathic Central Council Elections Rule, 1975 which while laying down the procedure for dealing with election disputes, also provides for an opportunity of hearing to all the parties. At this stage, it is deemed appropriate to refer Rule 28 of the Homeopathy Central Council (Election) Rules, 1975 which reads as under:-

“28. Procedure for dealing with election disputes

(1) The Central Government, after receipt of dispute under sub-section (2) of section 4 of the Act regarding any election, shall appoint an Inquiry officer not below the rank of Under Secretary to the Government of India to inquire into that dispute.

(2) The Inquiry officer within one week of his appointment shall send notice of hearing to the parties to the dispute asking them to submit statements in writing, if any, on the dispute within reasonable time as may be specified by him and shall also fix the date of hearing.

(3) After the expiry of the time specified for submission of statements, the Inquiry officer shall hear the dispute on such date and at such time and place as has been specified irrespective of whether written statement have been received or not and shall give reasonable opportunity to the parties to hear.

(4) All parties to the dispute shall have the right to appear before the Inquiry officer, only in person.

(5) Non-appearance of the parties to the dispute shall not be a ground for postponement of hearing on the date already fixed and the hearing shall proceed ex-parte until circumstances of non-appearance are beyond the control of the parties.

(6) During any stage of inquiry, the Inquiry officer shall have the right to examine such other documents and persons as deemed necessary by him for conduct of inquiry.

(7) After hearing all the concerned parties, the Inquiry officer shall prepare an inquiry report within a period of sixty days of his appointment and submit it to the Central Government for its consideration and decision.

(8) The Central government shall endeavor to take a decision on the Inquiry report as submitted by the Inquiry officer and communicate its decision on a dispute within thirty days of receipt of the Inquiry report."

4. The necessity to grant an opportunity of hearing was, thus, mandatory not only as per the statutory rules, but in my opinion, even otherwise where the very election of the petitioner was being set aside, it was incumbent upon the respondents to follow the principles of natural justice. In this connection, reliance may also be placed on the decision of the Supreme Court in *Nisha Devi v. State of H.P.* reported as **(2014) 16 SCC 392**.

"5. Trite though it is, we may yet again reiterate that the principle of audi alteram partem admits of no exception, and demands to be adhered to in all circumstances. In other words, before arriving at any decision which has serious implications and consequences to any person, such person must be heard in his defence. We find that the High Court did not notice the violation and infraction of this salutary principle of law. Accordingly, on this short ground, the impugned judgments and orders require to be set aside, and are so done. The matter is remanded back to the Divisional Commissioner for taking a fresh decision after giving due notice to the appellant and affording her an opportunity of being heard. The Divisional Magistrate, Kullu, shall complete the proceedings expeditiously, and not

later than six months from the date on which a copy of this order is served on him.”

5. Accordingly, the impugned order dated 15.01.2018 passed by respondent no.1 is set aside. It is made clear that since the order is being set aside only on the grounds of violation of Rule 28 of the Homeopathic Central Council Election Rules, 1975 as also the violation of principles of natural justice, the respondents will be free to take action as per law. In case, the petitioner is aggrieved by any further action of the respondents, he will be at liberty to challenge the same on all grounds including the grounds taken in the present petition.

6. The writ petition is disposed of with the aforesaid directions. The pending application also stands disposed of.

DASTI.

REKHA PALLI, J

FEBRUARY 26, 2018/gm