

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

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**Reserved on: 14.05.2018
Pronounced on: 11.07.2018**

**+ LPA 167/2018, C.M. APPL.12496/2018, 12497/2018,
12498/2018 & 15093/2018**

DR. VANITHA. R Appellant

Through : Sh. V.P. Singh, Sr. Advocate with
Sh. Vinay Bhasin, Sr. Advocate, Sh. Arjun
Pant and Ms. Isha, Advocates.

versus

MINISTRY OF AYUSH & ANR Respondents

Through : Sh. Sandeep Sethi, ASG with Sh.
Kirtiman Singh, CGSC, Sh. Prateek Dhanda,
Sh. Waize Ali Noor and Sh. Saeed Qadri,
Advocates, for Respondent No.1.

Sh. Jatan Singh, Sh. T.K. Joseph, Sh. P.K.
Jayakrishnan and Sh. Pavan Madhukar,
Advocates, for Respondent No.2.

Sh. Ravi Sikri, Sr. Advocate with Sh.
Suryadeep Singh and Sh. Deepank Yadav,
Advocates, for applicant/intervener, in C.M.
Appl.19864/2018.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

1. Dr. Vanitha R (hereinafter referred to as “appellant”) is aggrieved by the Ld. Single Judge’s decision, rejecting her writ petition. She approached this court, challenging a letter dated 08.03.2018 issued by the Union Ministry of Ayush (hereinafter referred to “the Union”) stating that her tenure as President of the Central Council of Indian Medicine (hereinafter referred to as "CCIM") had expired on 04.07.2017 and, requiring her to forthwith vacate that said office. The appellant also challenged the other letters, which initiated consequential action scheduling fresh elections to the post of the President have been scheduled for 23.03.2018.

2. In the present case, the relevant facts are that, Dr. Ved Prakash Tyagi was earlier elected as the President of CCIM and remained so till 27.08.2016. Since he was defeated in the CCIM elections in 2016 and he ceased to be a member of that body, the Supreme Court, *vide* its order dated 22.08.2016, directed him to discontinue as the CCIM President. Thereafter, as per the terms of Regulation 5(2) of the Central Council of Indian Medicine (General) Regulations, 1976 (hereinafter referred to as “the Regulations”), Dr. V. Arunachalam, the Vice President of CCIM was handed over charge of the post of President. Pursuant to the resolution of the CCIM executive dated 27.02.2017 with regard to holding of fresh elections for the post of President on 14.03.2017, notice under Section 7 (1) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as “the Act”), calling for elections to the post of CCIM President was issued.

In ensuing elections held on 14.03.2017, the appellant was elected as the President.

3. The appellant claims to have taken steps to improve the CCIM's working. Furthermore, Mr. V.D Raghunandan Sharma objected to her election under Sections 7 (1) and (3) of the Act. In response to this, while rejecting the representation, the Union, *vide* its letter dated 24.08.2017, specifically stated that the elections to the posts of President and Vice-President were conducted under Section 7 (1) the Act, whereas Section 7 (3) which dealt with issue of filling of casual vacancies, applied to other CCIM members. However, subsequently, the Union took the position that the appellant's term was valid only till 04.07.2017, i.e., for the remaining period of the previous President's term. The impugned letter directed the appellant to vacate the post of President with immediate effect and further directed the CCIM Secretary to conduct fresh elections for that post. The appellant requested the respondents, including the Union, to withdraw the letter, but instead of doing so, it directed completion of elections by 25.03.2018. Thereafter, on 09.03.2018, office memoranda were issued by the Union to the various authorities, asking them to ensure that the appellant had vacated her office by 5:00 p.m. that day. The appellant also placed reliance on a letter by the Secretary of CCIM dated 10.03.2018 to say that he was forced to sign and issue a notice for election after 8:00 pm on 09.03.2018, by the Union.

4. Alleging these facts, the appellant approached this court and also sought urgent interim relief as well. She relied on Sections 2, 3, 7

and 36 of the Act and provisions of the Regulations. Firstly, it was contended that the Union's action is premised on the fact that the appellant was elected against a casual vacancy, which was erroneous, because in terms of the scheme of the Act elections to the post of President could take place only against a regular vacancy and the Act does not envisage filling up of a casual vacancy of the post of President by way of election. The Appellant also urged that in casual vacancies of President, are filled up only under Regulation 5(2) of the Regulations framed under Section 36 of the Act. Regulation 5(2) provides that, in case there is a casual vacancy in the post of President, the Vice-Presidents of each of the three branches - Ayurveda, Siddha and Unani - are to hold the said post by rotation. Therefore, the appellant contended that her election meant that she could hold the position of President of CCIM for five years. It was also stated that the specific provision of Section 7 (1) which provides for election of a President is for a period of five years (or till his successor assumes the said office), meant that a vacancy in the post of president post in only a regular vacancy, which could not be labeled as a casual vacancy. Lastly, it was submitted that neither the Act nor the Regulations provided for re-election to the post of President or Vice-President and that Section 7 (3) dealing with the casual vacancies, applies only to the re- election of an ordinary member. It was further stated that the Union's action was not *bona fide*.

5. The Union and other respondents resisted the proceedings, stating that once the election process commenced the court should not

interfere with it. It was also submitted that the vacancy against which the appellant was elected as a President, was a casual vacancy, which had arisen after Dr. V.P. Tyagi, the erstwhile President, had vacated his post pursuant to the order dated 22.08.2016 passed by the Supreme Court in SLP No. (C) 19476-77/2016. It was also submitted that after Dr. V.P. Tyagi had vacated the said post, initially the Vice President of Siddha Branch had been asked to take charge of the same in terms of Regulation 5(2) of the 1976 Regulations. However, pursuant to a decision taken by the Executive Committee of Respondent No.2 in its meeting held on 27.02.2017, elections for the post of President were held on 14.03.2017, in which the appellant was elected as the CCCIM President. It was urged that the election was only against a casual vacancy of a President, and the appellant could hold the post of president only for the remainder term of the erstwhile President. Reliance was placed on Section 3 to say that the president is a member of the Central Council; therefore, Section 7 (3) applied.

6. The impugned judgment, after noticing the various provisions of the Act and Regulations, rejected the appellant's plea. It was *inter alia*, held as follows:

“22. In my considered opinion, a cogent reading of the different sub- sections of Section 3 of the Act makes it abundantly clear that, under the scheme of the Act, the constitution of the Respondent No.2/CCIM is prescribed under three categories of memberships. The three categories are, namely (i) a practitioner (of Ayurveda, Siddha or Unani/Sowa-Rigpa) elected from a State (ii) an elected

member from amongst the members of the faculty of a University (iii) a member, having special knowledge or practical experience in respect of Indian Medicine, nominated by the Central Government. Section 3 (2) of the Act prescribes that the President of the Respondent No.2 shall be elected from amongst the members of the Respondent No.2. Furthermore, as per Section 3 (3) of the Act, the Vice-President from each system of Medicine is elected from amongst the Members of the Respondent No.2 under Section 3 (1).

23. I may now move to Section 7 of the Act, which in my view, lies at the centre of the controversy between the parties. Having carefully considered the provisions of Section 7(1) viz-a-viz that of Section 7(3), I find that even though the reference made to a casual vacancy in Section 7(3) is only to a member of the Central Council, without there being any specific reference to the post of a President (which finds mention in Section 7(1) of the Act alone), I cannot lose sight of the fundamental fact that a President is also a member of the Central Council, which is apparent from a bare reading of Section 3 of the Act. Once the term "Member" is found to include the post of President, there is no reason as to why Section 7(3), which deals with elections to fill casual vacancies of members, would not apply to the post of President, who is equally a member of the Council.

24. There is yet another reason why, in my view, the election of the Petitioner has to be treated as against a casual vacancy, the term whereof had to come to an end with the remainder term of Dr. V.P. Tyagi. Since the tenure of the members of the Central Council itself is for five years, the newly elected/nominated members of the Council would not only have the right but also the responsibility to elect their

President and, therefore, there is absolutely no merit in the plea of the learned senior counsel for the Petitioner that every person elected as a „President“, irrespective of the nature of the vacancy, would be entitled to continue for a period of five years. In my considered opinion, such an interpretation, as is sought to be contended by the learned senior counsel for the Petitioner, would lead to a wholly absurd situation and cannot be permitted. Thus, in my considered view, even though Section 7(3) of the Act refers to filling up of a casual vacancy of a member and does not specifically refer to the President, the provisions of Section 7(3) would be equally applicable to the President, who is also very much a member of the Central Council. In view of my aforesaid conclusion, I find that the decisions relied upon by the learned senior counsel for the Petitioner are not applicable to the facts of the present case.

25. In my view, the reliance placed on Regulation 5(2) of the 1976 Regulations, by the learned senior counsel for the Petitioner, is wholly misplaced, since the said regulation is meant to cater to a stop gapsituation, where a Vice-President can be asked to discharge the functions of the President. A bare perusal of Regulation 5(2) shows that it is applicable in situations where the post of the President is vacant or, for any reason, the elected President is unable to exercise the power or discharge the functions of his office. Regulation 5(2) does not at all deal with either the election of the President or of his term.”

7. Appearing on behalf of the appellant, Mr. V.P. Singh, Learned Senior Counsel, urged that the impugned judgment overlooked the scheme of the Act. Section 3(1) of the Act speaks of a Central Council consisting of 'Members' while Section 3(2) speaks of the 'President of

the Central Council being elected by the Members of the Central Council from amongst themselves in the prescribed manner. It is argued that the appellant's election on 14.03.2017 was held under Section 7(1) of the IMCC Act, and she contested the said election based upon the notice issued under Section 7(1) of the IMCC Act. Therefore, she had a right to continue in the post for five years, as prescribed by that provision.

8. It was argued that the respondents were un-able to show a single instance from the inception of CCIM where any tenure of any President or Vice President was considered and/or treated as a casual vacancy. The consistent past practice of the CCIM i.e. that it was the Executive Committee of the CCIM that would meet and decide the date of elections for the post of President and Vice President of CCIM. Therefore, it was argued that the procedure of virtually directing the CCIM to hold elections after first indicating that the appellant had a five-year term, was *mala fide*. It was also submitted that the election was sought to be called by the Ministry without reference to the Executive Committee of the CCIM.

9. Mr. Singh reiterated that Section 7(1) is applicable to a member, President as well as Vice President of CCIM while section 7 (3) which pertains to casual vacancies clearly omits the words/terms President and Vice President. This means that subject to certain statutorily recognized eventualities, those functionaries would serve the term prescribed by the Act. Section 7(1) of the Act clearly provides that the tenure of the President would be for 5 years. On the other hand,

Section 7 (3) textually and by any yardstick is inapplicable to the term of the President.

10. Learned counsel submitted that Regulation 5 (2) of the Regulations clearly deals with a situation if the President's post falls vacant; however, the concept of casual vacancy under the IMCC Act is not extended to the post of President of CCIM. While concluding that reference to the post of President is only in Section 7 (1) of the Act and reference made to a casual vacancy in Section 7(3) is only to a member without any reference to the post of a President, the Learned Single Judge erred therefore, in law. It was submitted that Section 7 (3) refers to filling up of a casual vacancy of member and does not refer to the President. The Learned Single Judge, therefore, went against the plain wording of the statute, which made a clear distinction between Section 7 (1) and 7 (3) whereby the post of President was explicitly included in Section 7 (1) and explicitly excluded in Section 7 (3). Therefore, the content of the latter could not have been read into the former, by any principle of statutory interpretation. It was lastly urged that the impugned judgment is erroneous inasmuch as it holds that "Member" includes "President". It is submitted that being a member is a condition precedent for being "President". Yet, the two are interchangeable terms. The functions and method of election and removal of the Members and the President are fundamentally different.

11. The Additional Solicitor General (hereinafter referred to as "ASG"), Mr. Sandeep Sethi submitted that the impugned judgment

does not call for interference. He urged that the *rationale* for filling casual vacancies of all posts only for the remainder term permeates through all the election statutes and contends that, in case it were to be held that any casual member elected against a casual vacancy of a President is entitled to a tenure of 5 years, the same would lead to absurd results and would be completely abhorrent to the very governance of the Central Council, which itself is reconstituted by elections/nomination after every 5 years. The ASG relied on an unreported decision of this Court in the case of *Rashiddulah Khan v Ministry of Health and Family Welfare* [WP. No. 9082/2011], as well as on the decision of Calcutta High Court in *Pemba Tshering v. The State of West Bengal and Ors.* [WP No. 2349 (W)/2008] and a decision of the High Court of Punjab and Haryana in *Sukhdip Singh v State of Punjab & Ors* [AIR 2009 P&H 22].

12. The ASG contended that though Section 7 (3) applied to members, its logic and universal application was compelling, given that in a case if for some reason, a President or Vice President had to vacate office, the remainder of the term had to be filled as a casual vacancy. Therefore, Section 7 (3) was by way of limitation to the provision under Section 7 (1). It was submitted that in other words, had there been no provision like Section 7 (3), the appellant could have justifiably argued that the President, when elected necessarily has a fixed term of five years. However, that construction is not possible, given that every President is has to be from amongst the pool of CCIM members and can hold office as long as their membership exists.

Therefore, Section 7 (3) would apply with equal force to the tenure of a President, and qualify it.

13. The learned ASG also contended that, having regard to the judgment in *K.B. Nagur M.D. (Ayu.) v. Union of India* [WP(C) No. 33/2009] of the Supreme Court, the Central Government was under obligation to ensure that timely and fair elections for all members, including President and Vice President of the CCIM, are held. The ASG submitted that the Union had to ensure that no elected member of the Council, including the President or Vice-President, shall hold office beyond three months from the expiry of their respective terms. He also relied on *State of Manipur v Chandan Maniha Singh* 1997 (7) SCC 503 in support of his submission that the vacancy in the present case had to be considered as a casual vacancy.

Analysis and Conclusions

14. The material and relevant provisions of the Act are extracted below: -

"2. Definitions (1) In this Act, unless the context otherwise requires, xxx xxx xxx

(c) "Central Council" means the Central Council of Indian Medicine constituted under section 3;

xxx xxx xxx

(i) "regulation" means a regulation made under section 36;

xxx xxx xxx

3. Constitution of Central Council (1) The Central Government shall, by notification in the Official Gazette constitute for the purposes of this Act a Central Council consisting of the following members, namely:-

(a) such number of members not exceeding five as may be determined by the Central Government in accordance with the provisions of the First Schedule for each of the Ayurveda, Siddha and Unani systems of medicine from each State in which a State Register of Indian Medicine is maintained, to be elected from amongst themselves by persons enrolled on that Register as practitioners of Ayurveda, Siddha or Unani, as the case may be;

(b) one member for each of the Ayurveda, Siddha and Unani systems of medicine from each University to be elected from amongst themselves by the members of the Faculty or Department (by whatever name called) of the respective system of medicine of that University;

(c) such number of members, not exceeding thirty per cent of the total number of members elected under clauses (a) and (b), as may be nominated by the Central Government, from amongst persons having special knowledge or practical experience in respect of Indian medicine:

Provided that until members are elected under clause (a) or clause (b) in accordance with the provisions of this Act and the rules made thereunder, the Central Government shall nominate such number of members, being persons qualified to be chosen as such under the said clause (a) or clause (b), as the case may be, as that Government thinks fit; and references to elected members in this Act shall be construed as including references to members so nominated.

(2) The President of the Central Council shall be elected by the members of the Central Council from amongst themselves in such manner as may be prescribed.

(3) There shall be a Vice-President for each of the Ayurveda, Siddha and Unani systems of medicine who shall be elected from amongst themselves by members representing that system of medicine, elected under clause

(a) or clause (b) of sub-section (1) or nominated under clause (c) of that sub-section.

xxx xxx xxx

7. Term of office of President, Vice-President and members of Central Council (1) The President, a Vice-President or a member of the Central Council shall hold office for a term of five years from the date of his election or nomination, as the case may be, or until his successor shall have been duly elected or nominated, whichever is longer.

(2) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Central Council, from three consecutive ordinary meetings of the Central Council or, in the case of a member elected under clause (a) of sub-section (1) of Section 3, if he ceases to be enrolled on the concerned State Register of Indian Medicine, or in the case of a member elected under clause (b) of that sub-section, if he ceases to be a member of the faculty or Department (by whatever name called) of Indian Medicine of the University concerned.

(3) A casual vacancy in the Central Council shall be filled by election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold

office only for the remainder of the term for which the member whose place he takes was elected or nominated.

xxx xxx xxx

36. Power to make regulations-

[(1) The Central Council, may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generally of this power, such regulations may provide for-

(a) the manner of election of the President and the Vice-Presidents of the Central Council;"

15. The relevant provisions in the Regulations, i.e. Regulations 2(e), 4 and 5(2) of the 1976 Regulations read as under:-

"2. Definitions:

In these regulations, unless the context otherwise requires:-

(e) "President" means the President of the Central Council elected under sub-section (2) of section 3 of the Act.

xxx

xxx

xxx

4. President

The President shall exercise such powers and perform duties as may be assigned to him by or under the provisions of the Act and the rules and regulations made thereunder.

xxx

xxx

xxx

5(1).....

(2) If the office of the President is vacant or if the President for any reason is unable to exercise the powers or discharge the functions of his office, the Vice-Presidents, in rotation, for one year at a time shall act in his place and shall exercise the powers and discharge the functions of the President."

16. It is a matter of record that if the previous President, Shri Tyagi, was allowed to continue his term as President, uninterrupted, the tenure would have ended on 04.07.2017. However, he ceased to hold the position with effect from 27.08.2016. In terms of Regulation 5 (2), one of the CCIM's Vice President officiated as President. The question then is whether the election held on 14.03.2017, whereby all CCIM members throughout the country, voted to elect a President, was to fill a "stop gap" or casual vacancy, for only 4 months.

17. A conjoint reading of Sections 3 and 7 would indicate firstly, that the elected term of central council members and president/vice president is identical: it is five years (in terms of Section 7(1)). Secondly, the electoral college of the council members is not uniform or identical: those members elected from the state registers cannot exceed a certain number for each system (Ayurveda, Unani and Siddha); those elected from notified Universities, are through a different electoral college of faculty members and those in category of nominees are nominated by the Central Government. A joint reading of the entire Section 7 would therefore, in this context, indicate that whereas all CC members and office bearers such as President and Vice Presidents enjoy the same tenure of 5 years, *that tenure is not*

through the same process. Section 7 (2) is crucial for an overall analysis and understanding of Section 7 (3). It states that elected members (i.e. those provided for in Section 3 (a) and (b)) shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Central Council, from three consecutive ordinary meetings of the Central Council “*or, in the case of a member elected under clause (a) of sub- section (1) of Section 3, if he ceases to be enrolled on the concerned State Register of Indian Medicine, or in the case of a member elected under clause (b) of that sub- section, if he ceases to be a member of the faculty or Department (by whatever name called) of Indian Medicine of the University concerned.*” It is after spelling out the disqualifying event that the manner of filling up of “casual vacancy” is provided in Section 7 (3).

18. To this court’s mind, a compartmentalized reading of Section 7 (1) and (2) is not warranted. In proper sequence, while Section 7 (1) spells out the term of all members and specified office bearers, Section 7 (2) goes on to provide for contingencies of vacation of office (due to absence or loss of enrolment of state register). Axiomatically, if such member holds *any office – such as being a President or Vice President, that too automatically ceases.* In such event, not one, but two vacancies arise: one, as a Central council member; and two, as President/Vice President. Filling of the vacancy as central council member, in such event, is the one which is provided for in Section 7 (3) as a “casual vacancy” of which the new incumbent fills for the rest

of the term. However, that would not apply in the case of President/Vice President.

19. The *rationale* for this court holding that Section 7 (3) does not apply to elections to the position of President or Vice President is that a clear term is provided for in respect of such posts. Such functionaries undergo two electoral processes: one, earlier as members and the second, later by the entire college of members of the central council. Upon the expiry of term of a President, (which need not be co-terminus with the tenure of the entire membership of the Central Council, which is a continuing body), *the rest of the members elect an existing central council member as President: that tenure is necessarily for five years.* This is of course subject to the concerned member-President's outer limit of tenure as central council member.

20. In the present case, Mr. Tyagi *lost the election, but continued to occupy the post of President, which he was asked to vacate by the Supreme Court.* Apparently, his tenure as the central council member ended in July, 2017. Such being the position, what was advertised for election in March 2017 (and for which elections were held on 14.03.2017) *was not the "casual vacancy" of member of central council, but the post of President.* The electoral college was the central council, all of whom participated from different parts of the country and elected the appellant. Clearly, the vacancy of member was not the subject matter of election; rather it was of the President. The appellant was declared successful. *The appellant was already a central council member and was not elected to the casual vacancy of Dr. Tyagi's*

cessation of central council membership. This meant that she was entitled to continue as President for five years, subject to *her tenure as central council member ending*, sometime in 2020/2021.

21. In this court's opinion, the interpretation favored by the Learned Single Judge in the impugned judgment results in uncertainty and inchoateness with respect to a President's tenure. Three clear conclusions emerge from a plain reading of the statute: first, the central council is comprised of members from diverse institutions, however, all have to be borne in some state register of one of the systems of indigenous medicine; second, that the central council member's tenure of five years is identical; however, the council itself is a continuing body and does not *per se* terminate or dissolve. In other words, having regard to the diverse background and the system of nominations, a given percentage of members cease to hold office (as members of the council) each year. Third, central council members' electoral college is entirely different from the electoral college for President. To contest and hold office as President, it is necessary that the concerned individual *should be a central council member*. Thus, these three conclusions, support the court's conclusion that when a Presidential vacancy is advertised for election, the elected incumbent (who is an existing central council member) would hold office for five years, or the outer limit of her term as central council member, whichever is earlier.

22. In the decision reported as *Smt. Bayamma v Deputy Commissioner*, (WP 85991/2012, decided on 23.01.2013) certain provisions of the Karnataka Panchayats Act involving a similar dispute arose. The statute, like in the present case, provided for election of members of the Taluk Panchayats, who in turn were to elect Chairperson (Adhyaksha) and Vice Chairmen (Up-Adhyaksha). The re-designation of a reserved vacancy (from ST to SC) category led to dispute. The question therefore, was whether, the election of the reserved candidate was for the balance period. The term for members was 5 years; that for Adhyaksha was 20 months. The argument, (repelled by the Karnataka High court) was that the election could be not for 20 months, but only remainder. Section 2(5) of the Act (in that case) defined what was a causal vacancy as one “*occurring otherwise than by efflux of time.*” Section 134 of the Act stated that “except as otherwise provided” by the Act, members of a Taluk Panchayat were to hold office for a term of five years. The provision relating to Chairman/Vice Chairman read as follows:

“(3) The term of office of every Adhyaksha and Upadhyaksha of Taluk Panchayat shall, save as otherwise provided in the Act, be twenty months from the date of his election or till he ceases to be a Member of Taluk Panchayat, whichever is earlier.”

The High Court held as follows:

“11. A reading of the aforesaid provisions makes it very clear that term of office of members of a Taluk Panchayat elected at a General election is five years. Term of office of

such members commences on the date appointed for the first meeting of the Taluk Panchayat. However, the term of office of a member elected to fill a casual vacancy shall commence on the date of the publication of his name under Section 133 of the Act. Section 138 of the Act provides that the elected members of the Taluk Panchayat within one month from the date of publication of names of members under Section 133 of the Act has to choose two members from amongst them to be respectively as Adhyaksha and Upadhyaksha. Sub-section (3) of Section 138 of the Act specifically deals with the term of office of such Adhyaksha and Upadhyaksha. It provides save as otherwise provided in the Act, the term of office shall be twenty months from the date of his election or till he ceases to be a member of the Taluk Panchayat whichever is earlier. Therefore, it is clear that the term is twenty months and twenty months period has to be calculated from the date of his or her election. The proviso to Sub-section (2) deals with election of Adhyaksha and Upadhyaksha, when there is a casual vacancy for the post of Adhyaksha or Upadhyaksha. The argument is though a notification was issued for conducting the election to the posts of Adhyaksha and Upadhyaksha, because of the Court proceedings, the election could not be conducted. When the election was conducted after the legal proceedings were disposed of, it is a case of election to a casual vacancy and therefore, the persons who were elected can continue to hold the office only for the remaining period as provided under Sub-section (3) of Section 138 of the Act.

12. The casual vacancy has been defined under Section 2(5) of the Act, which means a vacancy occurring otherwise than by efflux of time. Section 137 of the Act deals with casual vacancy of a member of Taluk Panchayat. We are not concerned with the casual vacancy of a member of Taluk

Panchayat. We are concerned with casual vacancy of Adhyaksha or Upadhyaksha. Before it can be said that there is casual vacancy in the post of Adhyaksha, he should have been elected, his term is twenty months from the date of his election. Except by way of efflux of time, if a vacancy arises to the said post of Adhyaksha, by the elected Adhyaksha ceasing to occupy the said post, it should be said that there is casual vacancy. In the instant case, no Adhyaksha was elected in terms of Section 138(1) within thirty days from the date of constitution of Taluk Panchayat. A dispute arose regarding reservation. Matter reached this Court, writ petition was filed and allowed, writ appeal was filed and the matter was stayed and was disposed of. Then only election took place. During that interregnum, no person was appointed or elected as Adhyaksha. For the first time, Adhyaksha was elected on 12.01.2012, after the disposal of the writ appeals. The said Adhyaksha continues to hold the office even to this day. The period of the said Adhyaksha is 20 months from the date of her election, which expires on 11.09.2013. As there is no vacancy for the post of Adhyaksha, the question of filling up of casual vacancy would not arise. Therefore, the contention that the petitioner is elected to fill a casual vacancy and the term comes to an end as on 10.10.2012 is without any substance. As it is clear from sub-section 3 of Section 138 of the Act, the term of office of Adhyaksha and Upadhyaksha is twenty months and twenty months period has to be calculated from the date of his or her election. She is elected on 12.01.2012. Twenty months expires on 11.09.2013. As there is no vacancy for the post of Adhyaksha, the impugned notification issued to fill up the said post is illegal and is contrary to law and therefore, it requires to be set aside.

13. The language employed in Section 46, 138 and 178 of the Act makes it abundantly clear that term of office of the Adhyaksha of a Gram Panchayat and Adhyaksha of Taluk Panchayat and Adhyaksha of Zilla Panchayat is to be calculated from the date of his or her election. It is on the assumption that in the case of Gram Panchayat, 60 months period is provided for two terms i.e., 30 months each, in the case of Taluk and Zilla Panchayat, twenty months each, for three terms is provided. If the elections are conducted in accordance with law, each of the persons who are elected could enjoy the office for the aforesaid term. The problem arises when a dispute arise regarding the conduct of election, where the meeting is adjourned on the ground of want of quorum, though there is quorum, or the notification prescribing reservation is challenged and the Court grants stay order, legal proceedings takes considerable time and when the legal hurdles are removed, if elections are conducted under the existing rules, a period has to be calculated from the date of election then the second term or the third term get reduced and curtailed. However, in the light of the express provisions in the statute, where the intention of the legislature is made abundantly clear by declaring that the persons elected shall hold the office for a period from the date of his or her election, the Courts cannot place any interpretation, which reduces the term of office. But at the same time, because of the aforesaid circumstances, injustice is caused to the persons who are in no way responsible for such unfortunate situation. It is in this context, as the role of the Court is only to interpret the provisions as they exist, when the words used in the Section are very clear and unambiguous, it is not possible for the Courts to place such interpretation which runs counter to the express language in the Sections. It is for the legislators

to take note of the ground realities and how these provisions are working against the interest of innocent persons and remedy that defect.”

23. Apart from the above conclusion, which support's this court's view, there is yet another crucial aspect, i.e. that the letter (dated 08.03.2018 issued by the Central Government in the present case) categorically stated that *“The previous election of President CCIM was conducted on 05.07.2017 which shall continue up to 04.07.2016. Dr. V.P. Tyagi was elected as President vacated the post as his Membership to CCIM ended on 12.09.2016 and was not re-elected as Member from Uttarakhand.* This clarifies beyond a doubt that Dr. Tyagi – could at best have continued, till 12.09.2016, when a regular vacancy for both the membership of the central council and the post of President would have and did arise. At the stage when he relinquished office, had the election been held, the tenure would have been for five years. Instead, the election was held on 14.03.2017. Another way of looking at the issue is if the respondents are right in saying that the tenure is pursuant to a “casual vacancy” the five year term stipulated in Section 7 (1) would be ineffectual. To equate vacancies of members and vacancies of office bearers such as President, in the opinion of the court would not be appropriate, given the sequence and scheme of various provisions of Section 7. Furthermore, this would lead to unsettling effects, because if the balance tenure of a former President were to define the term of Presidency, the result would be chaotic; every few months members of the central council all over the country would have to descend and participate in elections. However, that

would not be the case with casual vacancy of members, because the selection/election or nomination would be either by the nominating body, or the concerned electoral college, i.e the University or state concerned.

24. In the decision reported as *Chandan Maniha Singh*, the Supreme Court had to deal with an entirely different situation, whereby the statute permitted an incumbent to continue after term ended, awaiting the filling of the post; the concerned incumbent argued that despite the completion of the three year period, his term had to be counted from the date of his nomination from a later date ignoring a previous order asking him to hold the post till further orders. The court held as follows:

“13. It is obvious that if such removal takes place as per Section 5 (3) the vacancy arising out of such termination cannot be anything but a casual vacancy depending upon such a contingency. Another instance of a casual vacancy is furnished by the provisions of sub-section (4) of Section 5 which deal with the resignation of the members of the Board, other than the member-secretary. If a member including Chairman resigns before his term is over, the seat of the Chairman or such other member thereupon shall become vacant. But that apart, Section 6 (1) deals with disqualification of sitting members of the Board. If such disqualification is found to have been incurred by any member under sub-section (1) then under sub-section (2) of Section 6 after giving him reasonable opportunity he can be removed from his office prior to the expiry of the usual term of his office of three years. That would be a third instance of a casual vacancy. When such casual vacancies occur, sub-section (6) of Section 5 would start operating and if another member is nominated to fill up that vacancy,

then his term of office would be for the remainder of the unexpired term of the member in whose place he steps in by nomination. In the facts of the present case, it is easy to visualise that as the earlier Chairman resigned on 10-7-1996 and he was nominated as Chairman on 5-5-1995, his regular term of office would have expired on 4-5-1998. In the meantime, because of his resignation, casual vacancy of Chairman occurred and the said vacancy was filled up by nomination of the respondent on 16-10-1996. Therefore, the unexpired term of his tenure as a substituted nominee Chairman would have continued only up to 4-5-1998. On that day, by the thrust of sub-section (6) of Section 5, vacancy of the Chairman could be said to have occurred and till that vacancy was filled up in accordance with law by the State authorities, the respondent could have continued to hold office beyond 4-5-1998 till his successor was available to hold that office. It is of course true that in the meantime the appellants themselves thought that the respondent was liable to be removed from office and passed order on 19-10-1998. That appeared to have been on the assumption that the successor was not available to take charge from the respondent. Be that as it may, so far as the impugned direction of the High Court is concerned and to which exception is taken by learned Senior Counsel for the appellants, it is to be stated on the correct interpretation of relevant provisions of the Act as mentioned earlier, that in case of any casual vacancy of any member of the Board duly constituted under Section 4, the successor nominee who fills up such vacancy will have only the unexpired period of office available in the light of the initial appointment of the original incumbent member vice whom he walks in to fill up the vacancy. It may also be noted that it appears that whenever there is a vacancy which is filled up, the State authorities seem to be reconstituting the entire Board every time when new members are inducted or a new Chairman is inducted. In fact, sub-section (3) of Section 4 does not seem to have been kept in view as it lays down that every State Board shall be a body corporate with the name specified by

the State Government in the notification under sub-section (1), having perpetual succession and a common seal. Under these circumstances, even though the State Government has authority to reconstitute the Board from time to time only because some casual vacancy occurred, it may not strictly be necessary for the authorities to undertake the exercise of reconstituting the entire Board nor could the said reconstitution be directed to continue until further orders, as the tenure of the members of the reconstituted Board also will be governed by sub-section (1) of Section 4. It must, therefore, be held while accepting the second contention of the learned Senior Counsel for the appellant that the High Court, with respect, was in error in taking the view that the tenure of the respondent as Chairman could have gone beyond 4-5-1998 or that there was no vacancy of Chairman from that date till the expiry of 3 years from the date of nomination of the respondent as Chairman.”

Consequently, the above decision – as observed earlier, does not constitute a guiding authority for the present dispute.

25. In view of the above discussion, the appeal has to succeed. During the pendency of this appeal, the second respondent, the Central Council of Indian Medicine, was permitted to declare the results of the election (which were challenged in this case) with the further added direction that the results would be expressly made subject to the present proceedings. Consequently, it is hereby declared that the appellant's five-year term would be from the date of her election as President of the council, subject to the earlier ending of her tenure as a council member. In other words, her election in question- held for the President of the council, in March, 2017 leads to her continuation in the office for the period as provided in Section 7 (1), but if her tenure

as a council member ends before March, 2022, she would be deemed to vacate office as President on that date. The appeal is allowed; the elections held in March 2018 are hereby set aside, but in these terms.

**S. RAVINDRA BHAT
(JUDGE)**

**A.K. CHAWLA
(JUDGE)**

JULY 11, 2018