

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1004 WRIT PETITION NO.5708 OF 2018

DR DADASAHEB NAMDEVRAO DAKE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. R. N. Dhorde, Senior
Advocate i/by Mr. Natu Sharad V.
AGP for Respondents 1 & 2: Mr. A.R. Kale
Advocate for Respondent No.3 : Mr. Amit A. Yadkikar
Advocate for Respondent No.6 : Mr. C.A. Jadhav
Advocate for Respondent No.7 : Mr. A.N. Sikchi
Advocate for Respondent No.8 : Mr. K.C. Sant

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 26th April, 2019

PER COURT :

1. On the earlier date, we had heard Mr. R.N.Dhorde, learned Senior Advocate. Today also, submissions are made by Mr.Natu,the learned Advocate for the petitioner. We have also heard learned Advocate for the respondents.

2. The petitioner assails the notification dated 15.05.2018 nominating respondents 3 to 8 as members of the Maharashtra Council of Acupuncture.

3. The learned senior advocate for the petitioner arduously submits that in nominating respondents 3 to 8 as members of the Council, respondent Nos. 1 and 2

have acted in arbitrary manner. No guidelines were prescribed. According to the learned Senior Advocate, the respondents have not taken into consideration the qualification of the members to be appointed on the Council. Consideration for appointment of respondent no.3 was that he had offered donation of Rs.10 lakhs and agreed to give his space for office. Apart from the above, no other qualification is considered while nominating respondent no.3. It is further submitted that respondents 5 and 6 are nominated as members on the basis of they being Sujok therapy practitioner and not practitioner in acupuncture. Respondent no.6 is not the medical practitioner at all. It is further contended that no guideline is prescribed for nominating the persons on the Council. While nominating members, respondents 1 and 2 have acted arbitrary and anything done arbitrarily requires to be set aside.

It is further submitted on behalf of the petitioner that the first Council appointed has to shoulder enormous responsibility for establishing the institutions, colleges, imparting degree or diploma in acupuncture and registering the petitioners. There are

more than 2 lakh acupuncture practitioners in the State of Maharashtra whose activities would be regulated by the newly enacted Statute through the Council. Therefore constitution of the first Council assumes enormous importance. The fact that respondent no.3 would be made the member and president of the Council was writ large when the Director of the Medical Education Mr. Dr. Pravin Shingare had made a statement and the same is reported in the newspaper that the State Government has no fund to allocate for the proposed council and respondent no.3 had agreed to donate Rs.10 lakh to the Council and to give his space of business for the office of Council. On such consideration respondent no.3 is nominated. Nomination of respondent no.3 is *quid pro quo* for offering donation and the space. No procedure is followed while nominating the members of the Council. No discernible criteria was laid down by respondent no.1 and 2 for first nomination.

4. It is submitted that Respondent Nos. 3 to 6 and 8 do not have any experience in the field of acupuncture. Nomination of these respondents suffers

from non consideration of meritorious persons actually working in the field of acupuncture in the State of Maharashtra. The nomination of respondents 3 to 8 is predetermined without open competition and hence illegal. Nomination of respondents 3 to 8 is not in a fair and transparent manner. The Medical Education and Research has given names of many experienced and meritorious acupuncture practitioners however they are not considered. The power to nominate is not a just professional engagement but such appointments have public element attached to them. There is nothing on record to suggest that search for meritorious candidate was undertaken. The petitioner is also practicing in acupuncture for six years. The case of the petitioner is also not considered by the respondents.

5. Learned A.G.P submits that respondent No.3 has not given any donation to the Government nor his dispensary as a space was offered. The same was never the consideration. Respondent No.3 was nominated by respondent No.1 as Member of Drafting Committee to prepare the Draft Bill. The fund and the space is

provided by the State Government. The president, vice president and the members of the Council are nominated in accordance with sub section 7 of Section 3 of the Maharashtra Acupuncture System of Therapy Act, 2015 and due procedure is followed. The newspaper report relied by the petitioner are false. On evaluation of merit, respondent no.3 is appointed, likewise the vice president of Council was nominated on the basis of expertise in the field of acupuncture. Learned A.G.P. for respondents 1 and 2 submits that names were forwarded to the State Government by the Department of Medical Education and Research (DMER) and selection was made. Record to that effect has been produced before the Court.

6. Mr. Jadhav, the learned Advocate for respondent No.6 submits that respondent No.6 is practicing in acupuncture and has various certificates and same have been considered.

7. Mr. Yadkikar, the learned Advocate for respondent No.3 submits that respondent no.3 has vast experience in acupuncture; he has various fellowship awards at national and international level in the field

of acupuncture. He is practicing in acupuncture for 26 years. Respondent No.3 along-with other eminent acupuncturist i.e. like Padmshiri Dr. Raman Kapur is working at national level for bringing in recognition to the science of acupuncture.

8. We have considered the submissions.

9. For the first time, Maharashtra Acupuncture System of Therapy Act, 2015 was enacted. Till the year 2015 viz. before enactment of the Act 2015, no such Act was existing or regulating the acupuncture system of therapy. After enactment of the Act of 2015, naturally the first Members of the Council are required to be nominated. Section 3 of the Act deals with the constitution of the Council and its incorporation. Sub Section 3 (a) to (e) of Section 3 of the Act provides details as to who shall be the members of the Council. Sub Section (7) of Section 3 provides that notwithstanding anything contained in foregoing sub sections or elsewhere in this Act on the first constitution of the council, all the Members referred in Clause (a) of sub section (3) shall be nominated by the State Government. As per proviso to sub section

(8) to section 3, the President and the Vice President of the first Council shall be nominated by the State Government. It appears that subsequently sub section 7 of section 3 has been amended on 17th December, 2018 and by virtue of the said amendment, powers were given to the State Government to nominate the members from various categories specified in Clauses (b), (d) and (e) of sub section (3) of Section 3 of the Act, 2015.

10. In the light of above, it is manifest that the State Government has powers to nominate members of the first Council. The source of powers exist with the State Government to nominate members of the first Council. Exercising the said powers, the State Government, under notification dated 15th May, 2018, nominated five members and one of member is nominated by the University and in the same notification respondent No.3 is nominated as president of the Council.

11. It appears that there are no guidelines prescribed while nominating the first members of the Council. Nomination of the first members of the Council is at the pleasure of the Government and the University. The scope of judicial review in the act of

the State nominating first members of the Council would be minimal.

12. The petitioner has relied on the judgment of the Apex Court in the Case of State of Punjab Vs. Brijeshwar Singh Chahal and another, reported in 2016 DGLS(Supreme Court) 319 to contend that nomination made in respect of the persons who discharge important public functions cannot remain unregulated. The screening has to be done. The process by which the best selection can be made has to be resorted. Respondent No.1 and 2 have produced on record the documents to suggest that the names of suitable persons were called from the DMER, the names were received from the DMER, Bio-data of each and every persons to be considered for nomination were also sent by the DMER and the same was considered.

13. The State Government is authorized to nominate persons. The nomination of the persons made may be open to judicial scrutiny to a limited extent. This Court cannot sit in appeal over the decision taken by the State Government to nominate the members of the Council. This Court would exercise the powers of

judicial review only if it is found that the nomination made is arbitrary, de hors the powers and for the consideration not suggested under the Statute. Arbitrariness certainly has no role in the Society govern by the rule of law. Arbitrariness is antithesis to justice,, fair place, equity and good conscious.

14. Before this Court would exercise its power of judicial review, it will have to be satisfied that the nomination made by the State Government of the Members of the Council is arbitrary and without considering their qualification and or their eligibility and competency to be the members of the Council. It appears that respondent No.1 had called for the list of the eligible persons for nomination from respondent No.2. Respondent No.2 is Directorate of Medical Education and Research and certainly has access to the information of the persons eligible and practicing in acupuncture. There may be many persons who would be eligible to be nominated as members of the first Council. However, those persons cannot claim a vested right to be nominated as members. It is the prerogative of the State Government to nominate the

members and only five members could have been nominated by the State Government. Respondent No.2 has suggested 30 names and from those 30 names, five names have been chosen by the State Government and they are nominated as members of the first Council. It is not the case that the State Government has not done any exercise for shortlisting the members to be nominated as members of the Council. Respondent Nos. 3 to 8 are nominated as members of the Council, that does not mean that others were not eligible. However, it was within the realm of the State Government to nominate the members. Of course we would not, in such matters, exercise our power of the judicial review as, it is shown that the State Government has consulted with respondent no.2 and sought for the names of the suitable persons practicing in the field of acupuncture and thereafter selected from those names.

15. In light of the above, we are not inclined to entertain the writ petition. Writ petition as such is dismissed. No costs.

(A. M.DHAVALÉ,J.)

(S.V.GANGAPURWALA, J.)