HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 3328 of 2018

Dr. Ved Prakash Tyagi .....Petitioner

Versus

Union of India and others ….Respondents

Mr. Abhinay Gupta, Advocate for the petitioner.
Mr. Hrishek Lakhera, Brief Holder for the State.
Mr. Sanjay Bhatt, Advocate of respondent no.1.

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

The present writ petition has been filed seeking following reliefs:-

"(a) issue a suitable writ or any other appropriate order or direction thereby directing the Respondent No.9 (SSP Dehradun) to conduct a thorough and proper inquiry under the supervision of this Hon'ble Court to enquire into the malpractices committed by Respondent nos. 4 to 8 and submit a report.

(b) issue a writ of certiorari or any other appropriate writ quashing the Order dated 10.10.2018 passed by the Respondent No.1 Vide. No. A. 11019/39/2018-EP III/CCIM Election for it being arbitrary, unreasonable and exercised in bad faith and in contravention of the directions of this Hon'ble Court issued vide order dated 04.07.2018 in WP (MS) No. 398/2018.

(c) issue a suitable writ or any other appropriate order or direction thereby declaring the CCIM Elections (Uttarakhand) 2016 under Section 3 (1) (a) of the IMCC Act, 1970 as illegal and thus, null and void insofar as the Respondent No. 4 has been declared as the Returned Candidate.

(d) issue a suitable writ or any other appropriate order or direction thereby consequentially declaring the Petitioner to

be the elected candidate in the CCIM (Uttarakhand) Elections 2016 or alternatively issue a suitable writ or any other appropriate order or direction thereby quashing the election dated 02.12.2016.

(e) issue a suitable writ or any other appropriate order or direction thereby quashing the Notification dated 09.02.2017 issued by the Respondent No. 1 whereby Respondent no. 4 has been notified as the Elected Member from the State of Uttarakhand under Section 3 (1) (a) of the IMCC Act, 1970 on the basis of the results dated 02.12.2016 of the CCIM (Elections) Uttarakhand, 2016.

(f) issue a suitable writ or any other appropriate order or direction thereby directing the Respondent Nos. 1 to 8 to compensate the Petitioner and pay Rs.2 crores for causing mental harassment and irreparable injury.

(g) pass such other order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Heard learned counsel for the parties through video conferencing and perused the record.

3. In the instant writ petition, the issue revolves around the election of respondent no.4 Dr. Ramakant Sharma as a member of Central Council of Indian Medicines from the State of Uttarakhand.

4. Today, on behalf of the respondent no.1, it is informed that respondent no.4 has died. This fact is not disputed by the petitioner. Let the factum of the death of respondent no.4 during pendency of this writ petition be recorded in the memo of petition and the amended memo be filed within a week.

5. Learned counsel for the petitioner would submit that despite death of respondent no.4, the illegalities and irregularities which were committed by respondent nos. 5 to 9 in holding the elections need to be investigated by the Police. Learned counsel referred to order dated

04.07.2018, passed in Writ Petition (M/S) No. 398 of 2018, which was filed by the petitioner on the same subject. In its order dated 04.07.2018, the Court, *inter alia*, observed as hereunder:-

> "It is thus, evident that the inquiry is inconclusive. The final order could only be passed after receiving the complete report.
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> The impugned order is also not a speaking order. Paragraph 22 of the Inquiry report has not been considered in right perspective by the authority concerned while passing the impugned order.
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> Accordingly, the writ petition is allowed. Impugned order(s) is set-aside. The Central Government is directed to ask the Inquiry Officer to complete the inquiry or new Inquiry Officer be appointed as per sub Section 2 of Section 4 of the Act, 1970, to determine the issue conclusively within a period of three months from today. Till further orders of this Court, the result for the post of President shall not be declared.
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> Pending application, if any, also stands disposed of accordingly."

6. Learned counsel for the petitioner would submit that in fact, the earlier inquiry report was not conclusive and the then Inquiry Officer has required some assistance of expert. But, it is argued that in subsequent inquiry, assistance of expert was not taken. Therefore, it is argued that the order dated 04.07.2018 of this Court, passed in Writ Petition (M/S) No. 398 of 2018 has not been complied with and the matter needs to be investigated.

7. Learned counsel for respondent no.1/Union of India would submit that pursuant to this Court's order dated 04.07.2018 passed in Writ Petition (M/S) No. 398 of 2018, the Central Government appointed a new Inquiry Officer, who has conducted a detailed inquiry and submitted a report to Central Government. A copy of report has also been filed by the respondent no.1/Union of India. Learned counsel for the respondent no.1 would also submit that in fact, the Central Council, as constituted under Section 3 of the Indian Medicine Central Council Act, 1970 has now been superseded by promulgating of the Indian Medicine Central Council (Amendment) Ordinance, 2020 which now has become Act w.e.f. 25.09.2020. Therefore, nothing survives in

this matter and now fresh elections are to be conducted pursuant to the Indian Medicine Central Council (Amendment) Act, 2020.

8. The core issue was election of respondent no.4 as the member of Central Council and irregularities committed in that election. Respondent no.4 has reportedly died. This Court on 04.07.2018, in Writ Petition (M/S) No. 398 of 2018 directed completion of inquiry or appointment of new Inquiry Officer. The new Inquiry Officer was appointed by the Central Government, who has submitted his report i.e. EC/Appeal/U-02/2018-AB and the Inquiry Officer recorded his conclusion in para 12 and at the end of it also made some recommendations. The conclusion and recommendations are as hereunder:-

> "12. **Overall Conclusion:** After analysing the specific allegations, supporting documents, facts and circumstances, it is opined that there appear to be no false voting, duplicate/false ballot papers, illegal rejection of ballots, mismatch of the signature of RO etc. as alleged by Dr. V.P. Tyagi, who preferred the appeal. However, his allegation of holding of ballot paper by Shri Deepak Jyoti and not depositing on the same day of collection is found to be correct. However, considering the fact that the main contention of Dr. Tyagi of misusing the votes casted in his favour by holding the ballot papers by Shri Deepak Jyoti thereby use of duplicate/false ballot papers is not substantiated as the inquiry proceedings could not establish his claim of any malafide in casting/rejecting of votes by other party including the RO and staffs he appointed for executing the election process. Hence, not depositing the letters on the same date of collection does not appear to be very much relevant in the absence of any proof of false voting/duplication/false ballot papers or illegal rejection, since the total number of letters/ballot papers collected from the GPO, Dehradun i.e. 2384 is tallied with the figure recorded in the register of the office of the Returning Officer. It is therefore concluded that the said election appear to have been held in a transparent and proper manner as mandated in the Act/Rules.
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> **Recommendation for system improvement:** To avoid such type of doubts/allegation, the Ministry may consider holding of such election at the office of each District Magistrate of a State with Ballot Box System in which the voters may drop their votes on the scheduled date personally and the result of that centre may be intimated to the Returning Officer by the respective District Magistrate."

9. The Inquiry Officer has categorically opined that there appear to be no false voting, duplicate/false ballot papers, illegal

rejection of ballots, mismatch of the signature as alleged by the petitioner.

10. Respondent no. 1 has got inquiry conducted pursuant to order dated 04.07.2018 of this Court passed in Writ Petition (M/S) No. 398 of 2018. The Court did not ask to seek assistance of any expert. What the Court has directed was to conduct an inquiry and it has been done.

11. Apart from it, by the Indian Medicine Central Council (Amendment) Ordinance, 2020, the Central Council has since been superseded. This ordinance, as stated, has become Act w.e.f. 25.09.2020. This amendment Act, adds Section 3A to the Indian Medicine Central Council Act, 1970. According to Section 3A of the Act, now the Central Council has to be reconstituted within a period of one year from the date of supersession of Central Council. This further eliminates the cause to litigate by the petitioner in this writ petition.

12. After Court's order dated 04.07.2018, fresh Inquiry Officer has been appointed and he has submitted his report and found that no illegality, as alleged by the petitioner was committed in holding the election. The elected member respondent no.4 has already died. By the Indian Medicine Central Council (Amendment) Act, 2020, the Central Council itself has been superseded. Therefore, nothing survives in this writ petition.

13. The writ petition stands disposed of accordingly.

(Ravindra Maithani, J.)
17.12.2020

Jitendra