

MINISTRY OF AYUSH

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v.

DR. VANITHA R. & ANR.

(Civil Appeal No.10031 of 2018)

SEPTEMBER 27, 2018

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**[ARUN MISHRA AND VINEET SARAN, JJ.]**

*Indian Medicines Central Council Act, 1970 – s.7 – Interpretation of – Member of Central Council of Indian Medicine (CCIM) who represented the State of Uttarakhand lost his membership of CCIM – He was also holding the elected post of the President of the CCIM for the tenure which would have expired on 04.07.2017 had he continued as Member – Thus, the office of the President fell vacant – Notice for holding election for the post of President issued – Election held on 14.03.2017– Respondent No.1 elected as the President – Issue as to the tenure for which election was held – Ministry passed order holding that the election for the post of President was held for the remainder period available to the erstwhile Member from Uttarakhand – Challenge thereto, dismissed by the Single Bench – However, Division Bench set aside the said order – Held: s.7(3) deals with the casual vacancy in CCIM and makes it clear that the person elected or nominated to fill such vacancy has to hold the office only for the remainder of the term for which the Member whose place he takes was elected or nominated, as the case may be – In the instant case, Member from Uttarakhand lost his membership to the CCIM – He would have held the post of the President for the period up to 04.07.2017, had he continued as Member of the CCIM – Casual vacancy of post of President was caused – Thus, the tenure for which election to the post of President was held was to be, as provided u/s.7 (3) – s.7(1) provides for a term of five years, however, the casual vacancy is dealt with u/s.7(3) and both the provisions have to be harmoniously interpreted – Present was not a case of regular vacancy but a casual vacancy that has arisen during the term of previous President– Thus, the period for which respondent No.1 was elected in March, 2017 was confined for remainder of the term i.e. up to 04.07.2017, not beyond that– Order passed by Division Bench set aside– Further,*

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- A *fresh election for the post of President held on 23.03.2018 is legal and valid – Central Council of General Medicine (General) Regulations, 1976 – Regulation 5(2).*

**Allowing the appeal, the Court**

- B **HELD: 1.1** A bare reading of the provisions contained in Section 7, Indian Medicine Central Council Act, 1970 makes it clear that person has to be first elected as Member of the Central Council of Indian Medicine (CCIM) for being elected as President or Vice President. By virtue of his holding the office as a Member, he holds the office of President or that of a Vice President. Once  
C he ceases to be a Member, he automatically ceases to hold the office of the President or Vice President as the case may be. The President, Vice President or Member of a Central Council has to hold the office for a term of five years as provided under Section 7 read with Section 3 from the date of his election or nomination  
D as the case may be or until his successor is duly elected or nominated, whichever is longer. [Paras 8, 9] [901-F-H]

- 1.2 Section 7(3) of the 1970 Act deals with the casual vacancy in the CCIM and the person elected or nominated to fill the vacancy has to hold the office only for the remainder of the term for which the Member whose place he takes was elected or nominated as the case may be. The expression ‘Casual Vacancy’ in the Central Council may arise that of a Member or in case Member was holding the post of President or Vice President, the vacancy for the post of President or Vice President along with Member may also occur simultaneously. In that event, the  
E provision of Section 7(3) would come into play and the expression ‘casual vacancy’ ‘would include in its ambit’ the vacancy so created for the post of President and Vice President. The provisions of Section 7(3) makes it apparent that person elected or nominated to fill the vacancy shall hold the office only for the remainder of  
F the term for which the Member whose place he takes was elected or nominated. In the instant case, Member from Uttarakhand lost his membership to the CCIM. He would have held the post of the President for the period up to 4.7.2017, had he continued as Member of the representative of the CCIM from Uttarakhand.  
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The casual vacancy of post of President had been caused. Thus, the tenure for which election to the post of President was to be, as provided under Section 7(3). The provision of Section 7(1) provides for a term of five years however the casual vacancy is dealt with under Section 7 (3) and both the provisions have to be read together and harmoniously interpreted. It was not a case of regular vacancy but a casual vacancy that has arisen during the term of previous President. Thus, the period for which respondent No.1 was elected in March 2017 was confined for remainder of the term i.e. up to 4.7.2017, not beyond that. [Paras 10, 11] [902-A-F]

1.3 It is apparent from the notice issued for holding election that it was under Section 7(1) and it was clearly with respect to the casual vacancy. As such provisions contained in Section 7(3) would come into play. Non-mention of provisions of Section 7(3) would not govern the tenure for which election has to be held in the case of casual vacancy. Section 7(3) clearly provides that in the case of the casual vacancy the term of election is only for the remainder of the period for which outgoing person would have held the office. It has to be held on the proper interpretation of the said provisions that the term of election of the person who had been elected in the casual vacancy is only for the remainder of the period. Resultantly, the order passed by the Division Bench of the High Court is set aside. Also, election for President held on 23.3.2018 is legal and valid. The result be declared after counting of the votes in accordance with law, within a period of ten days. [Paras 18, 20] [904-E-G; 905-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10031 of 2018.

From the Judgment and Order dated 11.07.2018 of the High Court of Delhi at New Delhi in LPA No. 167 of 2018.

Tushar Mehta, ASG, K. V. Vishwanathan, Pinaki Misra, Sr. Advs., Ms. Swati Ghildiyal, Rajat Nair, Arvind Kumar Sharma, Ms. Aishwarya Bhati, Ms. Chitrangda Rastravara, Ms. Ritu Aparna, Anirudh Sharma, Arjun Pant, Abhaid Parikh, Advs. for the appearing parties.

A The following Judgment of the Court was delivered :

**JUDGMENT**

B 1. The singular question arises for consideration as to interpretation of provisions contained in Section 7 of the Indian Medicines Central Council Act, 1970 (in short referred to as ‘the Act of 1970’). It is not in dispute that the erstwhile member of Council was holding the office of the President of the Central Council of Indian Medicine (in short ‘CCIM’). He was the representative of the State of Uttarakhand. His term expired on 27.8.2016. He was also holding the elected post of the President of the CCIM for the tenure which would have expired on 4.7.2017 had he continued as Member.

D 2. Notice for the purposes of holding an election for the post of President was issued on 27.2.2017 by the Returning Officer/Secretary of CCIM. On 14.3.2017, the election was held in which the respondent No.1, namely, Dr.Vanitha R. was elected as the President. Vd. Raghunandan Sharma, Jaipur filed representation on 18.4.2017 to the Government, Ministry of Ayush as to tenure for which election was held. It was decided on 24.8.2017 by the said Ministry and representation was rejected on the ground that the provision under Section 7 (3) of the Act of 1970 is applicable to Members only and not for the President and for Vice President.

E 3. Thereafter, the Ministry had taken opinion from the Law Department and the fresh order came to be passed on 8.3.2018 in which it was observed that, the election for the post of President was held for the remainder period available to the erstwhile Member from Uttarakhand, to hold the said office which came to an end on 4.7.2017. As such, a fresh election for the post of President was required to be held.

G 4. The order dated 8.3.2018 had been questioned by the appellant by way of filing writ petition in the High Court of Delhi. The Writ Petition was dismissed by the Single Bench. However, in Writ Appeal, the Division Bench has set aside the order passed by the Single Bench and also the fresh election held for the post of President in March 2018. Aggrieved thereby, the Ministry of Ayush and Central Council both came to this Court. The Central Council had withdrawn its Special Leave Petition(C) No.18329/2018 on 14.8.2018. Hence, the surviving appeal by the Ministry of Ayush.

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5. Mr. Tushar Mehta, learned Additional Solicitor General appearing on behalf of the appellant urged that a bare reading of the provisions of Section 7(3) read with Section 7(1) of the Act of 1970 makes it clear that the election held on 14.3.2017 was only for the remainder of the period of post of President for which Member from Uttarakhand would have held the office, who lost the membership and consequently the office of the President of CCIM, had fallen vacant. He has also referred to the provisions contained in Section 3 of the Act of 1970.

6. Shri Pinaki Misra, learned senior counsel appearing on behalf of the respondent No.1 contended that election had been held, not under the provisions contained in Section 7 (3) but under Section 7 (1), as apparent from the notice issued by the Returning Officer for the purpose of holding the election. It was not held for the remainder term, but it was regular election and, as such, the term of elected President would be for five years. He has also relied upon the order passed by the Ministry of Ayush on 24.8.2017, in which, it was opined that provisions contained in Section 7(3) of the Act of 1970 applies to the post of Members not to the post of President or Vice President. Thus, election was held for a period of five years. The Ministry is bound by its own order and cannot be permitted to take a different stand in this Court. Thus, the impugned order dated 8.3.2018 passed by the Ministry had been quashed, rightly by the Division Bench while allowing the writ appeal. Thus, no case for interference is made out.

7. The main question for consideration is interpretation of the provisions contained in Sections 7 (1) and 7 (3) of the Act of 1970. Before we advert to the same, Section 3 of the Act of 1970 provides for the constitution of the Council. Section 3 is extracted hereunder:

“Section 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

A 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;

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(c) such number of members, not exceeding thirty percent 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:

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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.

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

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(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.”

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The term of the office of the President, Vice President and Members of the Central Council is dealt with in Section 7. Section 7 is extracted hereunder:

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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

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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. A

(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 subsection, if he ceases to be a member of the faculty or Department (by whatever name called) of Indian Medicine of the University concerned. B C

(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. D

(4) Members of the Central Council shall be eligible for re-election or re-nomination.

(5) Where the said term of five years is about to expire in respect of any member, a successor may be elected or nominated at any time within three months before the said term expires but he shall not assume office until the said term has expired.” E

8. A bare reading of the provisions contained in Section 7 makes it clear that person has to be first elected as Member of the CCIM for being elected as President or Vice President. By virtue of his holding the office as a Member, he holds the office of President or that of a Vice President. Once he ceases to be a Member, he automatically ceases to hold the office of the President or Vice President as the case may be. F

9. No doubt about it that the President, Vice President or Member of a Central Council has to hold the office for a term of five years as provided under Section 7 read with Section 3 from the date of his election or nomination as the case may be or until his successor is duly elected or nominated, whichever is longer. G

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A            10. Section 7 (3) of the Act of 1970 deals with the casual vacancy in the Central Council and the person elected or nominated to fill the vacancy has to hold the office only for the remainder of the term for which the Member whose place he takes was elected or nominated as the case may be.

B            11. The expression ‘casual vacancy’ in the Central Council may arise that of a Member or in case Member was holding the post of President or Vice President, the vacancy for the post of President or Vice President along with Member may also occur simultaneously. In that event, in our considered opinion, the provision of Section 7 (3) would come into play and the expression ‘casual vacancy’ ‘would include in its ambit’ the vacancy so created for the post of President and Vice President. The provisions of Section 7 (3) makes it apparent that person elected or nominated to fill the vacancy shall hold the office only for the remainder of the term for which the Member whose place he takes was elected or nominated.

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D            In the instant case, Member from Uttarakhand lost his membership to the CCIM. He would have held the post of the President for the period up to 4.7.2017, had he continued as Member of the representative of the CCIM from Uttarakhand. The casual vacancy of post of President had been caused. Thus, the tenure for which election to the post of President was to be, as provided under Section 7 (3). The provision of Section 7 (1) provides for a term of five years however the casual vacancy is dealt with under Section 7 (3) and both the provisions have to be read together and harmoniously interpreted. It was not a case of regular vacancy but a casual vacancy that has arisen during the term of previous President. Thus, in our considered opinion, the period for which respondent No.1 was elected in March 2017 was confined for remainder of the term i.e. up to 4.7.2017, not beyond that.

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G            12. It was urged by the learned counsel appearing on behalf of the respondent No.1 that once Ministry had taken the decision under Section 4 (2) and had rejected the representation vide order dated 24.8.2017, it was not open to the Ministry to review the order and to take inconsistent view while passing the impugned order dated 8.3.2018, it should be held bound by its own order. There is no power of review with the Central Council.

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13. In our opinion, it is not the order of the Central Government which has to govern the tenure. Tenure is governed by Section 7 (3) read with Section 7(1). Even if there is no power of review the period for which election could be held was only up to 4<sup>th</sup> July, 2017. Whether there is an order by the Central Government or no order it cannot govern the tenure and the period for which the election was held could not have been extended even by the Ministry of Ayush by wrong interpretation of provisions and writ is not issued to perpetuate an illegality, particularly to enable holding the office unauthorizedly beyond period for which election was held. Thus, it is on this count also, we are not inclined to make any interference.

14. Shri Pinaki Misra, learned senior counsel appearing on behalf of the respondent No.1 has placed reliance upon the Central Council of General Medicine (General) Regulations, 1976 (in Short 'Regulations of 1976'). He has pointed out on the strength of Regulation 5 (2) of the Regulations of 1976 that if the office of the President is vacant or in the circumstances risen is unable to exercise powers or discharge the function, his office is to be held by the Vice President in rotation for one year at a time. Thus, the Regulation 5 (2) contemplates that office of the President is to be held for a period of five years it cannot be cut short. The Regulation fortifies the stand taken by the Central Government in order passed earlier i.e. on 24.8.2017. Thus, this Court should not interfere.

15. We have no hesitation in rejecting the submission as firstly, for the reason that Regulations cannot govern the provisions of the Act and secondly, we find that Regulation 5 (2) deals with powers of Vice President. The same is extracted hereunder:

“5. Vice Presidents:

(1) The Vice Presidents shall exercise such powers and perform such duties as may be assigned to him by or under the provisions of the Act and Rules and Regulations made thereunder:

(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 be exercise the powers and discharge the functions of the President.

- A        The order of the rotation shall be as below:  
          (a) Vice President – Ayurveda  
          (b) Vice-President – Unani  
          (c) Vice-President – Sidha”

- B        16. It is provided in Regulation 5 (1) that the Vice Presidents shall exercise such powers and perform such duties as may be assigned to him by or under the provisions of the Act. As per Regulation 5 (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,  
C        the Vice Presidents in rotation, for one year of Ayurveda, Unani and Siddha branch and shall hold the office.

17. The provisions of Regulation 5 are not at all attributed as the election had been held under Section 7(3) for the remainder of the term on 14.3.2017 as a ‘casual vacancy’ had arisen. In case, the interpretation as suggested by learned senior counsel is accepted, in that case no election  
D        could have been held in March 2017 and vacancy would be required to be maintained till the period the post of President would have been held by the Member who represented from Uttarakhand which was came to an end on 4<sup>th</sup> July 2017. Nonetheless, once election has been held for such vacancy the tenure is to be for remainder of the period only as  
E        provided specifically under Section 7 (3).

18. It is apparent from the notice issued for holding election that it was under Section 7(1) and it was clearly with respect to the casual vacancy. As such provisions contained in Section 7(3) would come into play. Non-mention of provisions of Section 7(3) would not govern the  
F        tenure for which election has to be held in the case of casual vacancy. Section 7(3) clearly provides that in the case of the casual vacancy the term of election is only for the remainder of the period for which outgoing person would have held the office. In our considered opinion, it has to be held on the proper interpretation of the said provisions that the term of  
G        election of the person who had been elected in the casual vacancy is only for the remainder of the period.

19. In case it is held that an election under Section 7 (1) will be for a period of five years, and period cannot be curtailed then, if we read it with Regulation 5(1), ignoring provisions contained in Section 7 (3) no

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election could have been held before completion of five years. That is not what is contemplated by the provisions contained in Section 7 as and when vacancy arises in the office of President, Vice President or Member, obviously, an election has to be held not only for the post of the Member and also for the post held by him for remainder of the period. A

20. Resultantly, we have no hesitation to set aside the order passed by the Division Bench of the High Court. We also hold that election for President held on 23.3.2018 is legal and valid. Let the result be declared after counting of the votes in accordance with law, within a period of ten days. Since we have decided the matter, any order of stay passed by any court on declaration of results shall cease to be operative and shall not come in the way of declaration of result. B C

21. Accordingly, the appeal is allowed. No costs.

Divya Pandey

Appeal allowed.