

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD**

**W.P. No. 42721 of 2022**

**Between:**

**Sri Bodige Sridhar and another**

**... Petitioners**

**And**

**The State of Telangana and others**

**... Respondents**

**JUDGMENT PRONOUNCED ON: 24.03.2023**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

- 1. Whether Reporters of Local newspapers : yes  
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : yes**

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SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 42721 of 2022**

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Between:

# Sri Bodige Sridhar and another

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> Head Note:

! Counsel for the Petitioners : Mr. A.Ravindranath Reddy

^ Counsel for the Respondent No.1: G.P. for Medical & Health

^ **Counsel for the Respondent Nos. 2 to 5: Mr**

**M.V.R.Suresh**

? Cases Referred:

1. (1876) Ch.D 426
2. 1993 SCC (3) 161
3. 1975 (1) SCC 559

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 42721 of 2022****ORDER:**

Heard Sri A.Ravindranath Reddy, learned senior counsel for the Petitioners and learned Government Pleader for Medical and Health appearing for respondent No.1 and Sri M.V.R.Suresh, learned counsel appearing for respondents 2 to 5.

**2. The main prayer sought for by the Petitioners is as follows :**

"to issue a Writ of Mandamus, declaring the Memo No. 6129/C2/2022 dated 15.07.2022 of the 1<sup>st</sup> respondent and the election dated 29.07.2022 to the post of the President and Vice President of the 2<sup>nd</sup> respondent as arbitrary, illegal and contrary to Pharmacy Act, 1948 and Telangana Pharmacy Council Rules, 1955, set aside the Memo No. 6129/C2/2022 dated 15.07.2022 of the 1<sup>st</sup> respondent and the election dated 29.07.2022 to the post of the President and Vice President of the 2<sup>nd</sup> respondent, direct Respondents 1 to 3 to conduct the elections for electing the said 6 members as required under clause (a) of Section 19 of Pharmacy Act, 1948 and consequently, conduct the elections to the posts of President and Vice President of the 2<sup>nd</sup> respondent.

**3. The case of the petitioners, in brief, is as follows:**

- a) Vide G.O.Ms.No 30 Health, Medical and Family Welfare (C2) Department, dated 06.04.2015, the Telangana State Pharmacy Registration Tribunal has been formed, in accordance to Section 30(1) of Pharmacy Act, 1948.
  
- b) Vide G.O.Rt.No.753, dated 21.11.2015, Director, Drugs Control Administration, Telangana State, Hyderabad was placed as FAC of the post of Registrar of Telangana State Pharmacy Council and vide G.O.Ms.No.13, dated 13.03.2016, 3 (Three) persons were nominated to Telangana State Pharmacy Registration Tribunal.
  
- c) Section 19 of Pharmacy Act, 1948, provides for constitution and composition of State Councils and as inferred from Section 19 of Pharmacy Act, 1948 Telangana State Pharmacy Council (TSPC) shall be a Body Corporate with 15 members.

d) The 1<sup>st</sup> respondent vide G.O.Ms.No.1, Health, Medical and Family Welfare (C2) Department, dated 07.01.2019 had nominated 5 (Five) members to Telangana State Pharmacy Council (TSPC) by exercising the powers under Clause (b) of Section 19 of Pharmacy Act, 1948 for a period of 5 years.

e) Except for the 6 (Six) members, who were to be elected by the registered pharmacists as mandated under Section 19 (a) of the Pharmacy Act, 1948, all the members had been registered in Telangana State Pharmacy Council (TSPC).

f) Without completing the composition of the State Council, the Registrar (3<sup>rd</sup> respondent herein) had forwarded the proposal dated 23.06.2022 to conduct elections to the posts of President and Vice President under Section 23 of The Pharmacy Act, 1948 by duly following Rule 17 of Telangana Pharmacy Council

Rules 1955 with only 9 (Nine) council members and the said proposal had been accepted by the 1<sup>st</sup> respondent vide Memo No.6129/C2/2022, dated 15.07.2022 and the same is without jurisdiction, illegal and contrary to the scheme of the Pharmacy Act, 1948 and Rules.

g) The said appointment of President and Vice President is not only in violation of the Pharmacy Act, 1948, and the said memo issued vide Memo No.6129/C2/2022 is not issued as per procedure prescribed under Rule 17 of Telangana Pharmacy Council Rules, 1955.

h) A council meeting was convened by the 2<sup>nd</sup> respondent on 29.07.2020 for conducting elections to the posts of President and Vice-President of the council. One Mr. R.Srinivas and Mr. A.Sanjay Reddy were nominated for the post of President.

Subsequently after casting the votes by the council members, the nominated persons secured 4 votes each and all the council members in the meeting had decided to elect the president by way of toss of coin and accordingly, Mr. A.Sanjay Reddy had been elected as the President of Telangana State Pharmacy Council (TSPC).

i) As per Rule 17 of Telangana Pharmacy Council Rules, 1955, when votes were cast equally, the council ought to have gone for another ballot and thereafter, for drawl of lots instead the President was elected by toss of coin, which is contrary to the Rule 17 of Telangana Pharmacy Council Rules, 1955.

j) Mr.R.Srinivas Reddy upon securing 50% of the votes, was elected as the Vice-President of Telangana State Pharmacy Council (TSPC).

k) Conduction of the election with only 9 (Nine) members is without jurisdiction and is in violation of the Section 19 (a) of the Pharmacy Act, 1948 and hence, the Memo No.6129/C2/2022 and the consequent election dated 29.07.2022 are liable to be set aside. Hence, the Writ Petition.

**4. The counter affidavit filed by respondent Nos. 2 to 4, in brief, is as follows:**

a) Petitioners are not being the members of Telangana State Pharmacy Council, have no *locus standi* to file the present Writ Petition questioning the election of President and Vice President.

b) The Petitioners have no right in challenging the Memo No.6129/C2/2022 dated 15.07.2022, as the decision of the Returning Officer or the Chairman shall be final, as has been contemplated under Section 24 of The Pharmacy Act, 1948.



c) Aggrieved by the result of the election, the dispute has to be risen within 7 (Seven) days from the date of publication of the results as mandated under Section 16 of the Telangana State Pharmacy Council Rules, 1955. But, the petitioner in spite of rising the dispute with the Returning Officer within 7 days had filed this Writ Petition after lapse of 3 (Three) Months.

d) Registrar has forwarded the proposal to conduct elections basing on the memo issued by the Government. The said memo has been issued by the Secretary to the Government, Health Medical and Family Welfare, Government of Telangana which cannot be challenged.

e) As per Rule 17 (2) of Telangana State Pharmacy Council Rules, 1955, the President has taken the chair to elect the Vice-President and hence, it is within the jurisdiction of Telangana State Pharmacy Council

Rules, 1955 and hence the election of President and Vice President is done as per the procedure laid down in Telangana State Pharmacy Council Rules, 1955.

f) Due to equality of votes among the contestants, the members have decided to go for toss of a coin and the Chairman, as per the collective decision of all members had finalized the election of the president and the same is not contrary.

g) Any grievance with regard to the election procedure has to be raised before the Returning Officer within 7 (Seven) days from the date of publication of the results as per Rule 16(1) of TSPC Rules, 1955, and contrary to the said rule, the petitioners have approached the Court without approaching the Government as required under Section 24 of the Pharmacy Act, 1948.

h) The Pharmacy Council of India vide circular dated 21.06.2022 had stated that the President of the Council shall be a registered Pharmacist and not any other professional and due to this there maybe occurrence of 'Administrative Paralysis' in case of absence of President to the Telangana State Pharmacy Council.

i) The election of President and Vice-President was conducted as per instruction of the Government vide a memo. Hence this Writ Petition is filed without any merits and is liable to be dismissed.

**5. PERUSED THE RECORD :**

**A. The order dated 12.12.2022 passed in**

**I.A.No.1/2022 in W.P.No.42721/2022 reads as under :**

Heard Sri M. Ravindranath Reddy, learned Senior Counsel for the petitioners, learned Assistant Government Pleader for Medical and Health and Sri M.V.R. Suresh, learned counsel for respondent No.2 to 4.

Though notice is served on respondent No.5 as early as on 30.11.2022, no appearance is entered on his behalf as on date.

In terms of Section 19 of the Pharmacy Act, 1948 (for short, 'the Act, 1948'), the constitution and composition of the State Pharmacy Council is required to be constituted. In terms of Section 19 (a), six members elected from amongst themselves by registered pharmacists of the State Council shall form part of the State Council and from amongst the members described under Section 19 (a) to (e) of the Act, 1948, the resident and the Secretary of the State Pharmacy Council and required to be elected. But in the instant case, the President and the Secretary of the State Pharmacy Council are elected without there being the members as contemplated under Section 19 (a) of the Act, 1948.

In the absence of six members being elected under Section 19 (a) of the Act, 1948, any election of President and Secretary of State Pharmacy Council is contrary to Section 19 of the Act, 1948.

In the circumstances, prima facie, the impugned Memo dated 15.07.2022 appears to be contrary to Section 19 of the Act, 1948.

Though counter affidavit is filed by respondent Nos,2 to 4, there is no proper justification made for electing the President and the Secretary of the Pharmacy Council without conducting elections for six members, as contemplated under Section 19 (a) of the Act, 1948.

In the circumstances, there shall be interim direction, as prayed for, for a period of eight weeks.

**B. Memo No.6129/C2/2022, dated 15.07.2022 of the**

**1<sup>st</sup> Respondent reads as under :**

In the Circumstances reported by the Registrar, Telangana State Pharmacy Council, Hyderabad, Government hereby accorded permission to the Registrar, TSPC, Hyderabad to conduct election for the posts of President and Vice President of TSPC and Section 23 of the Pharmacy Act, 1948 duly following Rule 17 of the Pharmacy Council Rules, 1955 to conduct the elections.

2. The Registrar, Telangana State Pharmacy Council, Hyderabad shall take necessary action accordingly and furnish compliance report to the Government.

**C. Paras 5, 6 and 7 of the Counter Affidavit filed by the**

**1<sup>st</sup> Respondent reads as under:**

"5. It is respectfully submitted that consequent to interim direction of the Hon'ble High Court dated: 12.12.2023, State Pharmacy Council has decided to conduct elections to six (6) members to the Council from the registered pharmacists of the state in terms of Section 19 (a) of Pharmacy Act 1948.

6. It is respectfully submitted that conducting of election under Section 19(a) of the Pharmacy Act, 1948 the register shall be brought up-to-date three (3) months before ordinary election to the State Council are held and the copies of this register shall be printed under Section 40(3)(a) of the Act.

7. It is respectfully submitted that to complete the updating of register and to conduct the election to six (6) members u/s 19(a) of the Act, state/ Pharmacy Council requires about six (6) months of time."

**D. Counter filed by the 3<sup>rd</sup> Respondent, in particular, paras 3, 4, 9, 12, 25 and 26 reads as under:**

**“3. In reply to para 2 of the affidavit, it is respectfully** submitted that the petitioners are questioning the Memo No 6129/C2/2022 dt 15/07/2022 issued by the Secretary Health Medical and Family Welfare Department, Govt of Telangana. The Election process cannot be questioned as the Returning Officer or Chairman's decision is final, as per section 24 of The Pharmacy Act 1948," Elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the State Government whose decision shall be final" as such the present writ petition is not maintainable.

**4. I submit that the petitioners have to raise any dispute** of election process within Seven days from the date of publication of results under Rule 15(1) to the Returning officer of election process which is Contrary to Rule 16(1) of T.S. Pharmacy Council Rules 1955.

Rule 15(1) of TSPC Rules 1955 states as under: -

"The Returning officer shall publish the results of the election in the Andhra Pradesh Gazette in the case of 1st election to the council and also send a report to the Government about the election"

Rule 16(1) of TSPC Rules 1955 states as under: -

"An election petition calling in question any election shall be presented to the Returning Officer by any

candidate or elector at such election within seven days from the date of publication of the results under rule 15"

In view of the above said observation of the rules it is clear that any aggrieved, member pertaining to the election process has to raise any objections within a statutory period of 7 days. Now the petitioners have approached this Honble court after a lapse of three months which is not maintainable.

**9. I further submit that as per Rule 17(2) of T.S.Pharmacy Council Rules, 1955 the President has taken the chair to elect the Vice- President as per the Procedure laid down in Sub Rule (1) which was duly followed during the election of Vice-President, hence it is within the jurisdiction as per the Telangana State Pharmacy council Rules, 1955.**

**12. In reply to para 9 of the affidavit I submit that the** contestants secured equal votes of 4 each as in case of equality of votes the members have decided to go for toss of a coin. Hence the same was taken up by the chairman as per the collective decision of all the members and the election of President was finalized which is not contrary as alleged by the petitioners.

**25. Meanwhile, Pharmacy Council of India issued a** Circular dated 21.06.2022 stating that, President of the Council shall be a Registered Pharmacist and not any other professional. Due to this there may be an occurrence of threat of "Administrative Paralysis" in

case of an absence of President to the Telangana State Pharmacy Council.

**26. To Cope with this situation, the Government of** Telangana conducted the election as per the Rule 17 of Andhra Pharmacy Council Rules 1955 (Adopted by Telangana State Pharmacy Council) as there is an availability of 4 Registered Pharmacists in the shape of Nominated Members U/S 19(b). Accordingly, Mr.A.Sanjay Reddy was elected as President and R. Srinivas as Vice-President.

In view of the above, it is prayed that as the election of President and Vice-President was conducted as per instructions of the Government (through a memo), the petition is filed without jurisdiction and liable to be dismissed."

6. **RELEVANT PROVISIONS OF LAW :**

a. **Section 19 of the Pharmacy Act, 1948 read as under:**

**Constitution and composition of State Councils.—Except where a Joint State Council is constituted in accordance with an agreement made under section 20, the State Government shall constitute a State Council consisting of the following members, namely:—**



**(a) six members, elected from amongst themselves by registered pharmacists of the State;**

(b) five members, of whom at least 2[three] shall be persons possessing a prescribed degree or diploma in pharmacy or pharmaceutical chemistry or 3[registered pharmacists], nominated by the State Government;

(c) one member elected from amongst themselves by the members of each Medical Council or the Council of Medical Registration of the State, as the case may be;

(d) the chief administrative medical officer of the State ex-officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;

4[(dd) the officer-in-charge of drugs control organisation of the State under the 5[Drugs and Cosmetics Act, 1940 (23 of 1940)], ex officio or if he is unable to attend any meeting, a person authorised by him in writing to do so;]

(e) the Government Analyst under the 5[Drugs and Cosmetics Act, 1940 (23 of 1940)], ex officio, or where there is more than one, such one as the State Government may appoint in this behalf:

Provided that where an agreement is made under clause (b) of sub-section (1) of section 20, the agreement may provide that the State Council to serve the needs of the other participating States also shall be augmented by not more than two members, of whom at least one shall at all times be a person possessing a prescribed degree or

diploma in pharmacy or pharmaceutical chemistry or a 6[registered pharmacist], nominated by the Government of each of the said other participating States, and where the agreement so provides, the composition of the State Council shall be deemed to be augmented accordingly.

**b) 17 (1) of the Telangana Pharmacy Council Rules, 1955 reads as under:**

The President and the Vice-President of the Council shall be elected at a meeting of the Council. When about to elect the President, the members present shall elect a temporary Chairman by a ballot if necessary, which ballot shall be taken by the Registrar. The meeting shall then proceed to the election of the President which shall be by ballot. It shall be competent for any member to nominate by ballot a member for the office of the President and the temporary Chairman shall announce the names of the members so nominated and arrange for a ballot. Every vote which shall be given at such a ballot for a person who has not been nominated shall be wholly void and ineffective. Should only two persons be nominated, the voting on the first ballot shall be final except in the case of equality of votes. **If more than two persons are nominated, the candidate obtaining the lowest number of votes at the first ballot shall be eliminated until only two remain when the ballot shall be final except in the case of equality of votes, provided that if one of the candidates secures more**

**than 50 per cent of the votes cast, he shall be elected In the case of an equality of votes, a further ballot shall be taken and if that be indecisive, the selection shall be decided by the drawing of lots.**

(2) The President having been elected will take the chair and the members will proceed to elect a Vice-President, the procedure laid down in sub-rule (1) being followed except for in the case of equality of votes, the President shall have a casting vote."

**c) Section 23 of the Pharmacy Act, 1948, reads as**

**under:**

23. President and Vice-President of State Council.—(1) The President and Vice-President of the State Council shall be elected by the members from amongst themselves:

Provided that for five years from the first constitution of the State Council the President shall be a person nominated by the State Government who shall hold office at the pleasure of the State Government and where he is not already a member, shall be a member of the State Council in addition to the members referred to in section 19 or section 21, as the case may be.

(2) 1[The President] or Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as a member of the State Council, but subject to his being a member of the State Council, he shall be eligible for re-election:

2[Provided that if his term of office as a member of the State Council expires before the expiry of the full term for which he is elected as President or Vice-President, he shall, if he is re-elected or re-nominated as a member of the State Council, continue

to hold office for the full term for which he is elected as President or Vice- President.]

**d. Rule 17 of the Telangana State Pharmacy Rules,**

**1955, read as under:**

17. Information to be furnished.—(1) The Central Council shall furnish copies of its minutes and of the minutes of the Executive Committee and an annual report of its activities 4\*\*\* to the Central Government.

(2) The Central Government may publish in such manner as it may think fit any report, 1[or copy], furnished to it under this section or under section 16. 2[17A. Accounts and audit.—(1) The Central Council shall

maintain proper accounts and other relevant records and prepare an annual statement of accounts, in accordance with such general directions as may be issued and in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Central Council shall be audited annually by the Comptroller and Auditor-General of India or any person authorised by him in this behalf and any expenditure incurred by him or any person so authorised in connection with such audit shall be payable by the Central Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person authorised by him in connection with the audit of the accounts of the Central Council shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts, and in particular, shall have the right to demand the production of books of accounts, connected vouchers and other documents and papers.

(4) The accounts of the Central Council as certified by the Comptroller and Auditor-General of India or any person authorised by him in this behalf together with the audit report thereon shall be forwarded

annually to the Central Council which shall forward the same with its comments to the Central Government.]

**7. FACTS NOT IN DISPUTE :**

**A. The 1<sup>st</sup> Respondent vide G.O.Ms.No.1, Health, Medical & Family Welfare (C2) Department, dt. 07.01.2019, has nominated 5 members to the Telangana State Pharmacy Council by exercising the powers under clause (b) of Sec.19 of the Pharmacy Act, 1948, for a period of 5 years.**

**B. 6 members as mentioned in clause (a) of Sec.19 of the Pharmacy Act, 1948, were not elected since inception of TSPC and the 6 members were to be elected by the Registered Pharmacies as provided under clause (a) of Sec.19.**

**C. The Registrar the 3<sup>rd</sup> Respondent herein forwarded the proposal dt. 23.06.2022 to conduct the elections to the posts of the President and the Vice-President u/s.23 of the Pharmacy Act, 1948, by duly following Rule 17 of the Telangana Pharmacy Council Rules, 1955 with the available 9 council members.**

D. Accepting the said proposal the 1<sup>st</sup> Respondent issued a Memo No.6129/C2/2022, dt. 15.07.2022.

E. Pursuant to the Memo of the 1<sup>st</sup> Respondent dt. 15.07.2022, the 2<sup>nd</sup> Respondent convened the council meeting with the available 9 council members on 29.07.2022 for the purpose of conducting elections to the posts of President and Vice President of the council and in the said meeting one Mr. R.Srinivas and Mr. A.Sanjay Reddy were nominated by council members for the posts of the President.

F. Subsequently, the council members casted their votes and in the said elections each of the said two contestants Mr. Srinivas and Mr. A. Sanjay Reddy secured equal votes of 4 each as one member out of the said 9 members was granted leave.

G. Upon both the contestants securing 4 votes, contrary to Rule 17 of the Rules 1955, all the council members in the meeting decided that the election to the post of President be decided by way of toss of the coin

and accordingly after toss of the coin the 4<sup>th</sup> Respondent herein i.e., Mr. Sanjay Reddy was declared to have been elected as President of TSPC and he occupied the Chair of the President.

H. Mr. R. Srinivas and Mr. T.Chandra Shekhar Azad were nominated by the members of the council for the post of Vice-President, and after the elections, Mr. R.Srinivas, secured 5 votes whereas Mr. T.Chandra Shekar Azad secured 2 votes, therefore the 5<sup>th</sup> Respondent Mr. R.Srinivas was elected as the Vice-President as he secured more votes.

**DISCUSSION AND CONCLUSION :**

8) This Court opines that the Petitioner is entitled for the relief prayed for herein for the following reasons :

i) In terms of Sec.19 of the Pharmacy Act, 1948 (extracted above) the constitution and composition of the State Pharmacy Council is required to be constituted. Sec.19(a) clearly indicates that the State Government should constitute a State Council consisting of 6 members, elected from amongst themselves by

Registered Pharmacists of the State. Admittedly in the present case as borne on record the President and Secretary of the State Pharmacy Council are elected in the absence of 6 members being elected U/s.19(a) of the Act, 1948 contrary to Sec.19 of the Act, 1948. This Court therefore opines that the Memo of the 1<sup>st</sup> Respondent dt. 15.07.2022 for conduct of elections to the posts of President and Vice-President, itself, is contrary to the scheme of the Pharmacy Act, 1948 and the Rules made thereunder.

ii) The procedure prescribed under Rule 17 of the Telangana State Pharmacy Rules, 1955 clearly provides that in the case of an equality of votes, a further ballot shall be taken and if that be indecisive, the selection shall be decided by the drawing of lots, but in the present case even as per the counter affidavit filed by the Respondent No.3 on behalf of Respondents No.2 and 4, it is clearly admitted at para 12 that the procedure adopted was toss of a coin upon the contestants having secured equal votes of 4 each instead of proceeding for another ballot and thereafter, for drawal of lots, instead



**the President was elected by toss of coin. Therefore this Court opines that the very election of the 4<sup>th</sup> Respondent herein is contrary to the procedure prescribed under Rule 17 of the Telangana State Pharmacy Rules, 1955.**

iii) The filling up of the vacancy of the member of the council is as per the procedure stipulated under Rule 47 of the Rules, 1955, as and when vacancy in the members of the council arises and the same has to be filled up in a time bound manner. Rule 47 of the Rules 1955 reads as follows :

**Rule 47 (1) : Within a week of the occurrence of a vacancy, otherwise than by the expiry of the term of office, the Registrar shall give intimation thereof to the President and also :-**

- (a) In the case of a vacancy to be filled by election 19(a), to the Government,**
- (b) In the case of vacancy to be filled by nomination under section 19(b) to the government and**
- (c) In the case of a vacancy to be filled by election under section 19(c) to Telangana Medical Council (b) in the case of a vacancy to be filled by 19(b), to the Government, and**

(2) In the case of vacancy, occurring by the expiry of a term of office of a member, intimation thereof to the authorities referred to in sub-rule(1) shall be given by the Registrar not less than two months before the date on which the vacancy will occur.

(3) Ninety days before the expiration of the term of office of any member, the Registrar shall draw the attention of the President to the impending vacancy so as to enable him to take necessary action. This Court opines that therefore when the filling up of the vacancy of the member of the council is provided to be filled up as explained above, the action of the 1<sup>st</sup> Respondent in conducting elections to the posts of President and Vice-President without initiating the required steps to fill up the said 6 vacancies as required under Clause (a) of Sec.19 of the Act, is without jurisdiction.

iv) Learned Senior Counsel Sri Ravindranath Reddy, appearing on behalf of the Petitioner relied upon the Division Bench Judgment dt. 06.12.2022 passed in W.P.No.1111 of 2019 and W.P.No.10240 of 2021 of M/s. Healthcare Reforms Doctors Association an others v. The State of Telangana, rep. by its Special Chief Secretary, Health, Medical and Family Welfare Department, and

submits that the view taken by the Court in the said judgment squarely applies to the facts of the present case. A bare perusal of the said judgment clearly indicates that the provision Sec.3(2)(b) of the Telangana Medical Practitioners Registration Act, 1968 is para materia to Sec.19(a) of the Pharmacy Act, 1948 and further that in an identical issue as in the present case, under the said Act it is observed by the Division Bench of our High Court in its judgment dt. 06.12.2022 at paras 16, 17, 27, 29, 35, 53, 54, para 55 (ii)(iii) and (iv) as under and further the relief sought for in the said W.P.No.1111 of 2019 is also extracted hereunder :

**"16. Petitioner has expressed two grievances. The first** grievance is that since the year 2007 there has been no election to the Medical Council. Right now only an Interim Medical Council constituted vide G.O.Rt.No.15 dated 06.01.2016 is in place. Even the said G.O.Rt.No.15 had constituted the Interim Telangana State Medical Council only as a stop gap arrangement. This situation cannot continue for an indefinite period. Elections are required to be held for constituting a regular Medical Council.

**17. On 10.02.2021, this Court had noted that** respondents had not filed counter affidavit. Court wanted

to know the reason for not holding elections to the Medical Council and instead being managed by an adhoc committee. Learned Government Pleader who represented the State was directed to obtain instructions as to the date on which steps would be taken to notify the elections for constituting the Medical Council.

**27. Mr. Sama Sandeep Reddy, learned counsel for the** writ petitioners made three-fold submissions. Firstly, he submits that last time elections were held to the Medical Council was in the year 2007. Thereafter, no elections have been held. Now the Interim Medical Council is holding office. It is purely an adhoc body. Already it is in office for more than six years since the year 2016. An adhoc body cannot continue for an indefinite period. Therefore, holding of elections to the Medical Council has become imperative. As such, G.O.Rt.No.15 dated 06.01.2016 cannot be sustained.

**29. Submissions made by learned counsel for the parties have received the due consideration of the Court.**

35. We may mention that there is no provision in the Medical Practitioners Registration Act for an interim council. All that the proviso to sub-section (1) of Section 5 says is that for a period of two years from the date of first constitution of the Medical Council, one of the ex officio members nominated by the government shall be the Chairman. Thus, under the Act,

such an ex officio member can be the Chairman for a limited period of two years from the date of first constitution of the Medical Council.

**53. We have already noticed that there is no provision in the Medical Practitioners Registration Act constituting Interim Medical Council.** The only provision that can have a remote relevance is the proviso to sub-section (1) of Section 5 which says that for a period of two years from the date of the first constitution of the Medical Council, one of the ex officio members nominated by the government shall be the Chairman of the Medical Council. But this provision also cannot be stretched to justify constitution of Interim Medical Council.

Even the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 does not provide for such Interim Medical Council. Even assuming that for the sake of administrative necessity, constitution of such Interim Medical Council became imperative, continuance thereof for more than six years cannot at all be justified. First of all, constitution of Interim Medical Council itself cannot be traced to any valid source of power. Secondly, even assuming such constitution to be a necessity, the same cannot continue for an indeterminate period. By its very nature and what has been mentioned in G.O.Rt.No.15 dated 06.01.2016, the Interim Medical Council is only a temporary measure; a stop gap arrangement till the

Medical Council is duly constituted in terms of Section 3(2) of the Telangana Medical Practitioners Registration Act, 1968. Therefore, continuation of G.O.Rt.No.15 dated 06.01.2016 has now become legally untenable.

**54. We are aware of the immediate effect due to setting** aside of G.O.Rt.No.15 dated 06.01.2016. The consequence would be that till the Medical Council is constituted in terms of Section 3(2) of the Medical Practitioners Registration Act, there would be no Medical Council in the interregnum. In other words, there would be a vacuum. For this duration, there will be no regulatory body of doctors in the State of Telangana for the purpose of registration, disciplinary action etc. In a situation such as this, the doctrine of necessity may have to be applied. In *Lalit Kumar Modi v. Board of Control for Cricket in India 3*, Supreme Court has held that the doctrine of necessity is a common law doctrine and is applied to tide over situations where there are difficulties as law does not contemplate a vacuum. The doctrine of necessity is often invoked in cases of bias where there is no other authority or judge to decide the issue. **However, as the law has evolved, the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. Therefore, applying the aforesaid doctrine, the Interim Telangana State Medical Council may have to be allowed to function**

**till the time the new Medical Council is constituted in terms of Section 3(2) of the Telangana Medical Practitioners Registration Act, 1968 and takes charge.**

**55. In the light of the above discussions, we, therefore, pass the following orders:**

(i) Para 4(3)(i) of the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 as contained in G.O.Ms.No.68 dated 03.08.2015 is struck down as illegal as being beyond the scope and ambit of an adaptation order;

(ii) The Interim Telangana State Medical Council constituted vide G.O.Rt.No.15 dated 06.01.2016 is legally untenable. However, for ensuring that there is no vacuum, the said Interim Telangana State Medical Council shall continue for a further period of three months by which time elections and nominations to the Telangana State Medical Council shall be completed;

(iii) Respondent No.1 shall take requisite steps including holding of elections and nomination of members in terms of sub-section (2) of Section 3 of the Telangana Medical Practitioners Registration Act, 1968 and complete the exercise within a period of three months from the date of receipt of a copy of this order;

(iv) Once a new body takes charge, the Interim Telangana State Medical Council would stand disbanded.

**This Court opines that a bare perusal of all the above referred paragraphs of the said judgment dated 06.12.2022 clearly indicates that the Petitioner herein is also entitled in principle for the relief prayed for in the present writ petition.**

The relief sought for in WP No.1111/2019 is as follows :

“setting aside G.O.Ms.No.15 dated 06.01.2016 issued by the 1st respondent as illegal and arbitrary, without jurisdiction and direct the 1st respondent to immediately conduct election to choose the members of the 2<sup>nd</sup> respondent as per section 3(2) of the Andhra Pradesh Medical Practitioners Registration Act, 1968.

v) This Court opines that when a statute describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all. The popular principle of law is settled in very old case of Taylor v Taylor reported in (1876) Ch.D.426, which is cited with approval by the Hon'ble Supreme Court of India in Shiv Kumar Chandha v Municipal Corporation of Delhi reported in 1993 SCC (3) 161 and also in Ram Chandra



Keshav Adke v Govind Joyti reported in 1975 (1) SCC page 559. In view of the fact that there is a clear go-bye to Section 19(a) of the Act, 1948, Rule 17 of the Rules, 1955 and also Rule 47(1) of the Rules, 1955, this Court opines that it is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself since the power under a statute has to be exercised in accordance with the provisions of the statute and in no other manner and therefore, the petitioner is entitled for the relief prayed for in the present writ petition.

vi) The learned Counsel appearing on behalf of Respondent No.3, clearly in the counter affidavit filed admits that the election of the President and Vice-President was conducted as per the instructions of the Government through a Memo to overcome the threat of administrative paralysis in case of an absence of President to the Telangana State Pharmacy Council., and further contends that the Writ Petition is not

maintainable and the Petitioner has to raise dispute in election process within the statutory period of 7 days from the date of publication of the results. This court opines that the said plea is not tenable in view of the simple fact that the doctrine of necessity cannot be applied contrary to the Rules 1955, in clear violation of Sec.19(a) of the Pharmacy Act, 1948 and further contrary to the procedure prescribed under Rule 17 of Rules 1955 and also contrary to Section 47(1) of the Rules, 1955. The present writ petition is maintainable because the Memo No.6129/C2/2022, dated 15.07.2022 of the 1<sup>st</sup> respondent and the consequential election dated 29.07.2022 held to the posts of President and Vice President is without jurisdiction.

vii) A bare perusal of the counter affidavit filed by Respondent No.1, paras 5, 6 and 7 (extracted above) clearly indicates that consequent to the interim direction of the Hon'ble Court dt. 12.12.2022, State Pharmacy Council has decided to conduct elections to 6 members to the council from the Registered Pharmacists of the State in terms of Sec.19(a) of the Pharmacy Act, 1948

and further it is stated that the State Pharmacy Council requires about 6 months of time. In view of the fact that the said counter affidavit has been filed on 28.02.2023, the required time as per the said counter filed would be 28.08.2023.

viii) In view of the fact that admittedly as the full 15 members of the council were not available the entire meeting conducted on 29.07.2022 for electing the President and Vice-President is contrary to the Rules, 1955 and therefore this Court opines that the said election of the 4<sup>th</sup> and 5<sup>th</sup> Respondents as President an Vice-President respectively needs to be set aside.

ix) Taking into consideration the above referred facts and circumstances of the case and the interim orders of the case dated 12.12.2022 passed in I.A.No.1 of 2022 in WP No.42721 of 2022 which are in force as on date, and the principle of law laid down by the Apex Court in Taylor v Taylor (1876) Ch.D 426 and reiterated in Shiv Kumar Chanda v Municipal Corporation of Delhi reported in 1993 SCC (3) 161 and also Rama Chandra Keshav

Adke v Govind Joyti reported in 1975 (1) SCC 559 and also the Division Bench Judgement of this Court dated 06.12.2022 passed in W.P.No.1111 of 2019 and W.P.No.10240 of 2021 of M/s. Healthcare Reforms Doctors Association and others v. The State of Telangana, rep. by its Special Chief Secretary, Health, Medical and Family Welfare Department (relevant paras extracted above), the Writ Petition is allowed as prayed and the Memo No.6129/C2/2022, dt. 15.07.2022 of the 1<sup>st</sup> Respondent is set aside and also the election dt. 29.07.2022 held to the Posts of President and Vice-President as per the Minutes of the Pharmacy Council Meeting held on 29.07.2022 in accordance with the orders of the State Government vide Memo No.6129/C2/2022, dt. 15.07.2022 is set aside. The Respondents No.1 to 3 are directed to conduct elections for electing said 6 members as required under Clause (a) of Sec.19 of the Pharmacy Act, 1948 within a period of 6 months from the date of receipt of the copy of the order. It is further clearly observed that applying the doctrine of necessity, in the meantime till the above exercise is

completed the day to day functioning of the Telangana State Pharmacy Council shall vest with the Director of Medical Education, Hyderabad who had been appointed by the Government as President of the Telangana State Pharmacy Council on full additional charge until further orders vide G.O.Rt.No.5, HM&FW (C2) Department on 02.01.2023 pursuant to the interim directions of this Court dt. 12.12.2022 passed in I.A.No.1 of 2022 in WP No.42721 of 2022.

Miscellaneous petitions if any, pending shall stand closed.

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**MRS JUSTICE SUREPALLI NANDA**

**Dated : 24.03.2023**

**Note: L.R. copy to be marked**

**b/o**

**kvrn**