HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.2705 of 2023

Mohammad Tahir Nizami

Versus

Federation of Pakistan through Secretary, Ministry of National Health Services, Regulations & Coordination, Pak. Secretariat, Islamabad and others

Petitioners by	**:**	**Mr. Sher Afzal Khan Marwat, Advocate.** **Mr. Qaiser Abbas, Adv.**
Respondents by	**:**	**Ch. Imtiaz Ahmed, Adv.** **Dr. Ishfaq Ahmed, Adv.** **Mr. Fazal-ur-Rehman Khan Niazi, Deputy Attorney General.** **Mr. Rahman Shah, DS(Admin).** **Mr. Ashraf Nasar, Deputy Director (Legal), Ministry of NHSR&C.**
Date of Hearing	**:**	**12.10.2023.**

Babar Sattar, J:- Through this judgment the Court will decide the afore-titled petition as well as the petitions listed in the Annexure.

2. The petitioners are aggrieved by the failure of respondent No.3, who has been appointed as Returning Officer for conducting elections of the National Council for Homeopathy **("Council")**, in deciding objections filed by the petitioner against the eligibility of respondents No.4 and 5 to contest the

election as Members of the Council and the public notice and the schedule issued for the election to the Council.

3. The learned counsel for the petitioners stated that pursuant to section 9(3) of the Unani, Ayurvedic and Homoeopathic Practitioners Act, 1965 **("Act")** the members shall be eligible for re-nomination or re-election to the Council on the expiry of the prescribed term. He stated that respondent No.5 is the President of the Council and without resigning from such office and prior to the expiry of his term, he cannot contest elections while using the influence of such office as that is in breach of Section 9(3) of the Act. He stated that respondent No.4 is also sitting member of the Council as Chairman of the Standing Committee and the same objection applies to him as well. He further stated that Rule 21(2) of the Unanai Ayurvedic and Homoeopathic System Medicine Rules, 1980 **("Rules")** vests in the returning officer the authority to scrutinize nomination papers and decide the objections under such Rules. He stated that in relation to 66 candidates more than 50 objections were received by respondent No.3. But he has accepted the nomination papers without deciding such objections through an omnibus order that betrays no application of mind and is in breach of Rule 21 of the Rules. He stated that against the inaction of respondent No.3 the petitioners also filed representations before respondent No.1 but the same have not been decided either.

4. Learned Deputy Attorney-General submitted that section 9(3) and section 9(5) of the Act had to be harmoniously

interpreted. Section 9(3) read together with section 9(5) of the Act suggested that the spirit of the law was to allow sitting members of the Council to seek re-election in a successive election and if so elected to continue to serve as members of the Council. He submitted that this reading of section 9 of the Act was in consonance with the past practice as well. He submitted that section 9 did not require sitting members of the Council to resign before seeking re-nomination or re-election and the law envisages that a member if reelected would continue to serve as member of the Council for another five years.

5. Learned counsel for respondents No.4 and 5 also submitted that section 9(3) and section 9(5) of the Act had to be interpreted harmoniously in conjunction with the Rules that had been framed for purposes of section 9(1) of the Act and prescribed the manner of the election of the Council and the term of the Council. Learned counsel for respondents No.4 and 5 took the Court through the various provisions of the Act and the Rules and submitted that Rule 17 of the Rules defined the Electoral College and Rule 18 of the Rules provided that the Federal Government had to specify a date of election pursuant to section 5 of the Act at least three months prior to the date on which the term of members of the Council was to expire. He submitted that in the event that Rule 9(3) of the Rules was interpreted in a manner that rendered sitting members of the Council ineligible to contest election it would be in disregard of the spirit of democracy given that the thirteen elected members of the Council were to be elected by the Electoral College in an

open election. And the choices available to the Electoral College could not be limited to exclude the sitting members of the Council. He further submitted that to the extent that the Court came to the conclusion that sitting members of the Council would not contest an election while serving on the Council, respondents No.4 and 5 were willing to resign from the position in order to contest the election to allay any concerns that they might influence the outcome of the elections by virtue of serving on the Council when the elections are convened.

6. While the petitioners have raised various challenges to the manner in which the election schedule has been issued by respondent No.3 and the manner in which objections to the eligibility of respondents No.4 and 5 have been dismissed in a summary manner without recording any reasons, the basic controversy that forms the subject-matter of the petitions is whether serving members of the Council are eligible to contest an election for a successive term which election is to be convened in view of section 9(5) of the Act at least three months prior to the expiry of the tenure of the Council on which they are members. Section 5 of the Act determines the composition of the Council. Section 7 of the Act provides that elections are to be held at such time and place and in such manner prescribed by Rules. Section 9(1) of the Act also provides that members of the Council are to be nominated and elected in such manner and for such term as may be prescribed by Rules. The Federal Government in exercise of authority under section 46 of the Act has enacted Rules, which prescribe the term of the Council and

the manner in which elections to the Council are to be convened. Let us reproduce here section 9 of the Act as well as the relevant rules that speak to the controversy before this Court:

> ***Section (9) Term of office of members:-***
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> *(1) the members of the Council shall be nominated or elected, as the case may be, in such manner and for such term as may be prescribed by rules.*
>
> *(2) Every member of the Council shall, subject to the other provisions of this Act and as may be prescribed by rules, hold office for the prescribed term and cease to hold office at the expiry thereof.*
>
> *(3) Members shall be eligible for re-nomination or re-election to the Council on the expiry of the prescribed term.*
>
> *(4) If a vacancy in the office of President, Vice-President or a member occurs during the prescribed term, through death, resignation, disability or otherwise, the vacancy shall be filled in accordance with the provisions of this Chapter.*
>
> *(5) The election or nomination of the members of the Council shall be held at least three months prior to the expiry of the prescribed tenure of the Council and expenditure on election shall be borne by the respective Council and if, at any time, the Council ceases to exist on expiry of its prescribed tenure, all powers and functions of the Council shall, till constitution of new Council or for a period of one year, be exercised and performed by such person or authority as may be appointed by the Federal Government in this behalf as if such person or authority were the Council.*
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> ***Rule-15. Term of office of members:-***
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> *The term of office of the members of the Council shall be five years, and the term of office of a member elected or nominated to a casual vacancy caused by the resignation, death or otherwise of a member shall be the remaining period of the term of the member in whose vacancy he was elected or nominated.*
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> ***Rule-18. Federal Government to notify dates of election:-***

Whenever an election to the Council is to be held under section 4 or section 5, the Federal Government shall, by notification in the official Gazette, specify a date, which shall not be less than three months preceding the date on which the term of the members of the Council is due to expire, on which such election shall be held, and may appoint a Returning Officer for holding such election.

Rule-19. Returning officer to notify dates for submission, scrutiny etc., of nomination papers:-

(1) As soon as may be after the date of election has been notified under rule 18, the Returning Officer shall, public notice, appoint in respect of the Province or the Provinces, as the case may be:-

(a) the last date (which shall be a date not earlier than fifteen days after the publication of the date of election) for submission of nomination papers;

(b) the date (which shall be a date not later than the third day after the date for submission of nomination papers) on which the nomination papers shall be scrutinized;

(c) the last date by which a nomination may be withdrawn; and

(d) in the case of election by postal ballot, the last date by which ballot papers shall reach the Returning Officer.

(2) The public notices shall state the time and place for receiving nomination papers and holding scrutiny of such papers.

Rule-21(2). Submission and scrutiny of nomination papers:-

The Returning Officer shall scrutinize all nomination papers along with any objections received by him on the date appointed for scrutiny, and shall, if found correct, declare the nomination valid, and where the Returning Officer thinks that a nomination paper suffers from any defect, he may, after such summary enquiry as he thinks fit, reject the nomination papers recording his reasons thereof; Provided that no nomination paper shall be rejected only on the ground of technical defect or

error not of substantial character which may be allowed to be corrected.

7. Rule 15 of the Rules clearly provides that the term of office of members of the Council is five years. And in the event of the resignation or death of member the vacancy is to be filled for the remaining term. In other words the tenure of the Council and all its members comes to an end at the same time. Section 9(5) of the Act mandates that, *"the election or nomination of members of the Council shall be held at least three months prior to expiry of the prescribed term of the Council."* Section 9(5) of the Act is then to be read with Rule 18 of the Rules which requires the Federal Government to specify a date for purposes of election of a Council under section 5 of the Act, which date must, *"not be less than three months preceding the date on which the term of the members of the Council is due to expire on which such elections shall be held …".* Rule 19, 20, 21, 22 and 23 of the Rules read with Rule 27 explain the manner in which an election schedule is to work guiding the Returning Officer as to how various dates are to be notified for purposes of scrutiny of nomination papers and issuance of voting lists and the conduct of the actual election on the voting date. What is evident from section 9(5) of the Act read together with the Rules is that the members of the Council whether to be elected or nominated will be so elected or nominated at least three months prior to the expiry of tenure of an existing Council. As the election of a successive Council is to be held during the term of a serving Council i.e. at least three months prior to the expiry of such term of five years, in the event that incumbent members of the

Council are eligible for re-election to become members of successive Council they will obviously be sitting on the Council at the time when election of a successive Council takes place. The only question thus is whether section 9 of the Act allows sitting members of the Council to contest the election to serve on a successive Council.

8. Section 9(3) of the Act determines the eligibility of members for re-nomination or re-election to the Council and plainly provides that members of the Council shall be eligible for re-nomination or re-election *"on the expiry of the prescribed term"*. As has been discussed above, the term of the Council is prescribed by Rule 15 of the Rules as a five-year period. If a member of the Council is only eligible for re-nomination or re-election upon expiry of the prescribed term of five years, the election of the successive Council under section 9(5) of the Act read together with Rule 18 of the Rules would have already taken place by the time that the term of office of such member expires.

9. The learned counsels for the respondents insisted that it was imperative to determine the intent of the legislature in section 9(3) of the Act, which was permissive and not prohibitive for members to be re-nominated or reelected. This Court is unable to accord such reading to section 9(3) of the Act when read together with sections 9(1), 9(2) and 9(5) of the Act. Sections 9(1) and 9(2) of the Act read with Rule 15 of the Rules provides that a member will serve out a five-year term and will cease to hold office upon expiry of such five-year period. Section

9(5) of the Act then mandates that the election of successive Council must be held three months prior to the expiry of the term of the Council. If section 9(3) of the Act is read in such manner as being suggested by learned counsels for the respondents, the said section would become redundant. Section 9(3) of the Act clearly states that members become eligible for re-nomination or re-election on expiry of their five-year of the Council term. The learned counsels for the respondents wish the Court to read the said sub-section as stating that members are eligible for re-nomination or re-election prior to the expiry of their prescribed term. If that is what the legislature had intended, instead of using the words "on expiry of the term" it could simply have written "prior to the expiry of the prescribed term", or better still it could simply had omitted section 9(3) of the Act or stated that members of the Council are eligible for re-nomination or re-election.

10. The respondents are asking this Court to read into the statute that what is not provided therein. They wish for the Court to attribute intent to the legislature that is not reflected from the words used by the legislature. Even from a policy perspective it is hard to accord section 9(3) of the Act the meaning being accorded by the respondents under the doctrine of purposive interpretation. The intent of the legislature as evident from section 9(3) of the Act read together with section 9(5) of the Act is to create a cooling-off period for the incumbent members of a Council and enable other members to be elected as members of the Council. It cannot be presumed that such

was not the intent of the legislature and in order to make sense of section 9(3) of the Act the Court must read into the said sub-section what is not provided therein. It is settled law that where it appears that the words used by the legislature are unambiguous, it is not for the Court to read into the statute and give it a meaning that does not flow from the ordinary meaning of the words used (see for example ***Federation of Pakistan through Secretary M/o Petroleum and Natural Resources Versus Durrani Ceramics*** ***(2014 PTD 2016), Jamat-i-Islami Pakistan Versus Federation of Pakistan (PLD 2000 SC 111), Standard Printing Press Versus Sind Employees' Social Security Institution (1988 SCMR 91)*** and ***M/s Telenor Pakistan (Pvt.) Ltd. Vs. Federation of Pakistan through M/o Finance and 4 others (2022 PTD 1097)***).

11. A plain reading of section 9(3) of the Act read together with the other sub-sections of section 9 of the Act provides that the members of a Council are not eligible for re-election till after the expiry of their five year term by which time the election of the successive Council would already have been convened. Consequently, the respondent No.3 could not have accepted the nomination papers for respondents No.4 and 5 to contest elections of the successive Council, which were being convened at a time when their term in office had not expired and they were incumbent members of the Council. They were therefore ineligible to contest the election and the acceptance of their nomination papers was in breach of section 9(3) of the Act. The

acceptance of nomination papers of respondents No.4 and 5 is therefore declared to be unlawful. Respondent No.3 will remove the names of respondents No. 4 and 5 and the names of any other members of the Council whose term as members of the Council has not expired, and issue an updated list of valid nominations for purposes of Rule 22 of the Rules. Respondent No. 3 will proceed to issue a revised schedule of the next steps to be followed for purposes of convening the election in accordance with the rules from the stage from which the process was suspended by virtue of the order of this Court dated 12.09.2023. Respondent No.3 will ensure that the election is convened and a Council is in place prior to the expiry of the term of the incumbent Council as required by section 9(5) of the Act.

12. These petitions are ***allowed*** in the above terms.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **23.10.2023.**

JUDGE

Approved for reporting.

M.A. Raza

Annexure

1.	W.P. No.2734/2023	Kashif Imran Vs. Govt. of Pak., M/o National Health Services, Regulation & Coordination, Islamabad, etc.
2.	W.P. No.2737/2023	Ghulam Murtaza Khan Vs. Govt. of Pak., M/o National Health Services, Regulation & Coordination, Islamabad, etc.
3.	W.P. No.2742/2023	Mohammad Tahir Nizami Vs. FOP through Secretary, Ministry of National Health Services, Regulations & Coordination, Pak. Secretariat, Islamabad and others
4.	W.P. No.2743/2023	Ahmed Hassan Vs. FOP through Secretary, Ministry of National Health Services, Regulations & Coordination, Pak. Secretariat, Islamabad and others
5.	W.P. No.2744/2023	Saleem Khan Vs. FOP through Secretary, Ministry of National Health Services, Regulations & Coordination, Pak. Secretariat, Islamabad and others
6.	W.P. No.2745/2023	Ali Raza Chohan Vs. FOP through Secretary, Ministry of National Health Services, Regulations & Coordination, Pak. Secretariat, Islamabad and others