

THE BIHAR STATE BOARD OF HOMEOPATHY
MEDICINE, PATNA

v.

THE STATE OF BIHAR AND ORS.

OCTOBER 10, 1995

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Bihar Development of Homeopathy System of Medicine Act, 1953
Section 5—Constitution of Bihar State Board of Homeopathy Medicine—Succeeding board—Held—Means a succeeding board at which the old out going
members are succeeded by a new set of members.*

Appellant—Board, constituted under the Bihar Development of Homeopathic System of Medicine Act, 1953, had abolished 8 posts of Homeopathic Chikitsac by a resolution dated 14th May 1988, including the 6 posts held by the writ petitioners in High Court. The High Court held that the posts were not abolished in accordance with law because the board which passed the resolution was not duly constituted. This decision was upheld by the division bench of the same court. Hence these appeals by the Board.

Allowing the appeal, this Court

HELD : 1. The Bihar State Board of Homeopathy Medicine is a composite body. It is composed of different sets of members who are appointed or elected by different bodies in different ways. It can not be expected that all sets of members would be always nominated or elected at the same time. Notification dated 29th of January, 1986 which has nominated the President and the four other nominated members, has also clearly provided that the two other sets of members namely, the elected members and legislative members whose terms have not expired would also continue to be the members of the Board. The same would, therefore, be true of all categories of members. [155-G-H]

2. Section 5 of the Bihar Development of Homeopathy System of Medicine Act, 1953 provides for continuation of members in office until the succeeding Board is formed and holds a meeting with a quorum. The whole purpose is to ensure that the Board remains properly constituted.

A Therefore the succeeding Board in the context of Sec. 5 can only mean a succeeding Board at which the old outgoing members are succeeded by a new set of members. Once they are appointed or elected, as the case may be and a meeting of the new Board with quorum takes place, the previous set of members ceases to be a part of the Board. Therefore the seven elected members whose names had been notified under the notification of 17th Aug., 1984 continued to be the members of the Board even after the expiry of their term since they had not been replaced by newly elected members and there was no successor Board. They were entitled to attend the meeting of the Board on 14th May 1984. The Board meeting had the requisite quorum, and, therefore, it had validly passed a resolution abolishing the 8 posts. Nevertheless, in the event of the said posts being revived or similar posts being created in future the Board may consider the petitioners in view of their past service by giving them a suitable waiver of age bar, if required. [156-B, E, G-H, 157-A-B]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9278-79 and 9280 of 1995.

From the Judgment and Order dated 20.8.92 of the Patna High Court in L.P.A. Nos. 50, 49 & 39 of 1990.

E R.K. Khanna and R.P. Singh for the Appellant.

Mrs. Rani Chhabra, for the Respondent in C.A. No. 9280/95.

Ms. Abha R. Sharma, (NP) for the Respondents in C.A. Nos. 9278-79 & 9280/95.

F The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Leave granted.

G These appeals have been filed by the Bihar State Board of Homeopathy Medicine, Patna (hereinafter referred to as the Board). The Board is constituted under the Bihar Development of Homeopathic System of Medicine Act, 1953. The dispute relates to the abolition of 8 posts of homeopathic Chikitshak out of which 6 posts were occupied by the six petitioners in the three writ petitions bearing Nos. 4462, 4039 and 7424 of 1988 filed in the High Court of Patna. A learned Single Judge of the High Court who heard these writ petitions held that the posts were not abolished

in accordance with law because the respondent i.e. the Board which passed the Resolution abolishing these posts was not duly constituted. This decision has been upheld in appeal by the Division Bench of the Patna High Court. From this decision, the present appeals have been filed before us.

The six petitioners in the writ petitions were appointed as Homeopathic Chikitishaks on temporary/*ad hoc* basis in or around 1983-1984. Their appointments were regularised in 1985 pursuant to a decision taken by the President of the Board. During this period the Board was under severe financial constraints. It is pointed out in the counter affidavit that pursuant to the Government Notification dated 22.11.1975, the appellant-Board was divested of its powers to hold examinations and confer degrees and diplomas. Consequently, a major part of the work of the Board relating to holding of examinations was transferred to the Bihar University. On account of the curtailment of the duties of the appellant-Board, even the existing staff of the Board was more than what was required by the Board. Despite having such excess staff, six further appointments were made as a result of which the six petitioners in the writ petitions were appointed as Homeopathic Chiktishaks. According to the appellant-Board, this imposed an unnecessary financial liability upon the Board which was already under financial strain. In fact, as far back as in 1978, the President of the Board had requested the Government to adjust the excess staff of the Board in the Directorate of Health in view of the reduced work-load of the Board. This request was repeated in 1983. The audit report raised certain objections to the additional staff being engaged and salary being paid to such additional staff. Ultimately, the Additional Secretary in the Department of Health, Government of Bihar directed, *inter alia*, that in order to have a check on the financial burden of the appellant-Board, no new post should be created and no new expenditure should be incurred. A further direction was given that unnecessary posts should be abolished and irregular appointments should be cancelled.

The appellant-Board, therefore, convened a meeting on 14th of May, 1988 at which it passed a Resolution abolishing 8 posts of Homeopathic Chikitshaks which included the six posts held by the petitioners in these writ petitions. The Resolution of the appellant-Board dated 14th of May, 1988 was challenged in these writ petitions by way of an amendment since the Resolution was passed after the writ petitions were filed. The writ

A petitions were originally for payment of salary and for other reliefs.

B The learned Single Judge has held that the decision to abolish these posts was taken *bona fide*. He has also found that the appointments of the six petitioners were irregular and should have been cancelled. However, he has held that the Board which passed the Resolution in question was not duly constituted in accordance with law. Hence the Resolution has no legal effect. Accordingly, he has set aside the Resolution abolishing the posts of the petitioners in the writ petitions. He has also observed that this will not preclude the Board from holding a proper meeting in accordance with law and taking an appropriate decision in regard to the petitioners in the writ petitions. A Division Bench of the High Court has dismissed the appeals without any speaking order.

D The only question that we have to consider is whether the Board which took the decision on 14th of May, 1988 was validly constituted. For that purpose, it is necessary to turn to the provisions of Section 3 of the Bihar Development of Homeopathic System of Medicine Act, 1953. Section 3 provides as follows :

"3. Establishment and constitution of Board.

E 1. The State Government may, by notification establish a Board to be called the Bihar State Board of Homeopathic Medicine consisting of :

- F a. a President to be nominated by the State Government.
- F b. four members to be nominated by the State Government;
- G c. seven members to be elected in the prescribed manner by the registered homeopathic practitioners from amongst themselves;
- G d. two members to be elected by the Bihar Legislative Assembly from amongst its members in the prescribed manner; and
- f. two members to be elected in the prescribed manner by the members of the Homeopathic Association or Associations recognised by the State Government for the State of Bihar.

H Provided that when the Board is established for the first time,

the President to be nominated under clause (a) and the members to be nominated under clause (b) and the members to be elected under clause (c), clause (d), clause (e) or clause (f) shall be appointed by the State Govt. and the Board as so constituted shall hold office for a period of three years from the date of the publication of the names of the President and members in the official Gazette under section 6 or such further period as the State Government may by notification, fix.

2. The Board shall be a body corporate and shall have perpetual succession and a common seal with power to acquire and hold property, both moveable and immoveable and to transfer any such property subject to the prescribed conditions and shall by the said name sue be sued. "

The term of office of the members of the Board is prescribed by Section 5 which is as follows :

"Section 5: Save as otherwise provided by this Act, the term of office of nominated and elected members of the second and every subsequent Board shall be for a period of three years from the date of publication of their names in the Official Gazette under section 6 and shall include any further period which may elapse between the expiration of the said period of three years and the date of the first meeting of the succeeding Board at which the quorum is present."

Sections 6 and 13 are also relevant. These are as follows :

"Section 6 : The names of the President and of any members nominated or elected under section 4 shall be published by the State Government in the Official Gazette.

Section 13:

1. The Board shall have an office at Patna and shall meet at such time and place and every meeting of the Board shall be summoned in such manner as may be provided by regulations;

Provided that until regulations are made it shall be lawful for the President to summon a meeting of the council at such time

A and place as he may deem expedient by a letter addressed to each member on a clear notice of fifteen days.

2. No business shall be transacted at any meeting of the Board unless six members are present;

B Provided that in an adjourned meeting all business postponed for want of quorum at the original meeting may be transacted if not less than three members attend such meeting."

C The Board, therefore, is a mixed body which is composed of various sets of members. The President and four members of the Board are to be nominated by the State Government. Seven members have to be elected by registered homeopathic practitioners. Two members have to be elected from the Bihar Legislative Assembly from amongst its members and two members have to be elected by the members of the various Homeopathic Associations recognised in the State of Bihar. The names of members as and when nominated or elected have to be notified.

D By a Notification dated 31st of December, 1982, it seems that a Board was notified by the State Government consisting of a President, four nominated members and other elected members. The Notification is not produced before us. From the recitals in the judgment of the learned Single Judge of the High Court, it seems that the term of the President and four nominated members was to commence from 31st of January, 1983 and, therefore, would expire at the end of three years on 31st of January 1986.

E The names of the seven elected members were notified only on 17th of August, 1984 after the elections were held. The names of the two members of the Legislative Assembly were notified on 14th of December, 1985.

F It is an accepted position that since the seven elected members names were notified on 17th of August, 1984, their term would expire only on 17th of August, 1987. While the term of the two Legislative Assembly Members who were notified on 14th of December, 1985, would expire on 14th of December, 1988.

G Clearly, therefore, the Board is a composite body and the terms of its various members expire at different times. The composition of the Board, therefore, keeps on changing.

H

Since the term of the President and four nominated members was expiring on 31st of January, 1986, a Notification was issued on 29th of January, 1986 nominating a new President and four new nominated members. The Notification also set out that those members of the earlier Board whose appointments had been notified under Notifications dated 17.8.1984 and 14.12.1985 (the seven elected members and the two members of the Legislative Assembly) shall continue as members of the new Board till they complete the term of three years. After February 1986, therefore, the Board consisted of a new President, four new nominated members and the existing seven elected members and the existing two members of the Legislative Assembly.

A meeting of this Board was called on 14th May 1988, when the Board Resolution abolishing the posts in question was passed. As on 14th May 1988, the term of the seven elected members had come to an end. However, they were not replaced by seven new elected members. At the Board meeting of 14th of May 1988, apart from the President, three nominated members and three elected members were present. According to the appellants, since the quorum for any Board meeting is six and there were six person present apart from the President, the Board had a quorum and was entitled to conduct business.

The question is whether under Section 5, the seven elected members continued to hold their posts until seven new members were elected and a Board meeting was held thereafter at which there was a quorum. Section 5 provides that the term of office of elected members shall be for a period of three years and any further period beyond three years till the date of the first meeting of the succeeding Board at which the quorum is present. What is meant by the "Succeeding Board"? Does it mean the Board minus the members whose term has expired? Or does it mean a Board with newly elected/appointed members in replacement of the outgoing? It is the latter which can be considered as a "Succeeding Board". The Board is a composite body. It is composed of different sets of members who are appointed or elected by different bodies in different ways. It cannot be expected that all sets of members would be always nominated or elected at the same time. In fact, that is clearly recognised in the Notification of 29th of January, 1986 which has freshly nominated the President and four nominated members. It has also provided that two other sets of members, namely, the elected members and the legislative Assembly members whose

A terms have not expired would also continue to be the members of the Board. The same would, therefore, be true of all categories of members. If the term of a substantial number of members comes to an end, can the remaining few function as the Board simply because they are six or more (the quorum figure)? To avoid such a situation, Section 5 provides for continuation of members in office until the succeeding Board is formed & holds a meeting with a quorum.

The first part of Section 5 clearly deals with the duration of the term of members of the Board and not with the duration of the term of the Board. It provides that the term of office of members would continue till the first meeting (with quorum) of the succeeding Board. The succeeding Board, therefore, does not refer to a depleted Board without members whose term has expired. If this were the intention, there would be no point in continuing the membership of old member till the next meeting of the Board. In the interregnum between the two meetings, since the Board does not transact any business, there is no purpose in continuing old members. They might as well cease to hold office on the expiry of three years. The whole purpose of continuing them till they are replaced is to ensure that the Board remains properly constituted. Therefore, the succeeding Board in the context of Section 5 can only mean a succeeding Board at which the old outgoing members are succeeded by a new set of members. Once they are appointed or elected as the case may be, and a meeting of the new Board with quorum takes place, the previous set of members ceases to be a part of the Board.

In the present case, therefore, although the President and four nominated members had changed from January, 1986, the other existing members of the Board continued and would continue even after the expiry of their term until they were replaced by another set of members belonging to the same category and a meeting of the Board with quorum could be held. Therefore, the seven elected members whose names had been notified under the Notification of 17th of August, 1984 continued to be the members of the Board even after the expiry of their term since they had not been replaced by newly elected members and there was no successor Board. The same Board continued. The seven elected members, therefore, continued to be the members of the Board and were entitled to attend the meeting of the Board held on 14th of May, 1988. Since six members constitute a quorum, the Board meeting had the requisite quorum and,

therefore, it had validly passed a Resolution abolishing the eight posts in question. The High Court, therefore, was not right in coming to a conclusion that the Board Resolution of 14th of May, 1988 was not passed by a duly constituted Board and, therefore, should not be given effect to. A

In the premises, the appeals are allowed and the judgment and order of the High Court is set aside. The original writ petitions are accordingly dismissed. Nevertheless, in the event of the said posts being revived or similar posts being created in future the Board may consider appointing the six original petitioners or any one or more of them to such posts in view of their past service by giving a suitable waiver of age bar, if required. In the circumstances there will be no order as to costs. B C

R.A.

Appeal allowed.