

**IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH**



**DATED THIS THE 07<sup>TH</sup> DAY OF JUNE, 2021**

**BEFORE**

**THE HON'BLE MR.JUSTICE M.NAGAPRASANNA**

**WRIT PETITION No.211065/2020 (CS-EL/M)**

**BETWEEN:**

DR. GACHINAMANI NAGANATHA  
AGED ABOUT 70 YEARS  
OCCUPATION MEDICAL PRACTITIONER  
RESIDING AT DARGA ROAD, JAGAT  
KALABURAGI – 585 101.

**... PETITIONER**

(BY SRI AMEET KUMAR DESHPANDE, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
DEPARTMENT OF HEALTH AND FAMILY WELFARE  
(MEDICAL EDUCATION)  
M.S. BUILDING, BENGALURU-560001  
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. THE RETURNING OFFICER  
FOR ELECTION TO THE KARNATAKA  
MEDICAL COUNCIL AND THE JOINT REGISTRAR  
OF COOPERATIVE SOCIETIES  
BENGALURU-560001.
3. THE REGISTRAR  
KARNATAKA MEDICAL COUNCIL  
NO.16/2, 2<sup>ND</sup> FLOOR, MILLER TANK BED AREA  
VASANT NAGAR, BENGALURU – 560 052.

4. DR. MADHUSUDHAN KARIGANNOOR  
SON OF K.ESHWARAPPA  
AGED 51 YEARS  
RESIDING NEAR AMRUTHESHWARA TEMPLE  
VIJAYA VITTALA NAGAR, SIRUGUPPA  
BELLARY-583121.
5. DR. SIDIGINAMOLA MENASINA SOMNATH  
SON OF LATE S.M.VIRUPAKSHA  
AGED 54 YEARS  
RESIDING AT B S COMPOUND, MOKA ROAD  
GANDHINAGAR, AMARPURA  
BELLARY – 583 103.
6. DR. YOGANANDA REDDY Y.C.,  
SON OF CHANDRASHEKAR REDDY H.,  
AGED 53 YEARS  
RESIDING AT PRUTHVI CHILDREN HOSPITAL  
Y. NAGESH SHASTRI NAGAR  
BELLARY – 583 103.
7. DR. HONNEGOWDA  
SON OF LATE JAVAREGOWDA  
AGED 67 YEARS  
SHARADA NURSING HOME  
SHANKARA MUTT ROAD  
K.R. PURAM, HASSAN – 573 201.
8. DR. RAVINDRA R.,  
SON OF M. RAMAIAH  
AGED 57 YEARS  
RESIDING AT 'SUGUNA' # 652  
12<sup>TH</sup> MAIN ROAD, 2<sup>ND</sup> BLOCK  
RAJAJINAGAR, BENGALURU – 560 010.
9. DR. RAVI K.,  
SON OF S.KRISHNAPPA  
AGED 42 YEARS  
RESIDING AT B-009,  
MITTAL PANORAMA

APARTMENTS, K C NAGARA  
MYSURU – 570 011.

10. DR. PAVANKUMAR NINGANAGOUDA PATIL  
SON OF NINGANAGOUDA  
AGED ABOUT 42 YEARS  
OFFICE AT D N B PATIL HOSPITAL MULGUND NAKA  
GADAG – 582 103.
11. DR.SUDHIR R. JAMBAGI  
SON OF REVANASIDDAPPA  
AGED 50 YEARS  
RESIDING AT SHRAVYA, 1<sup>ST</sup> MAIN  
2<sup>ND</sup> CROSS, NARAYANAPURA  
DHARWAD – 580 008.
12. DR. RAVI N.,  
SON OF NINGAPPA N.S.,  
AGED 41 YEARS  
RESIDING AT NO.612, 5<sup>TH</sup> MAIN,  
13<sup>TH</sup> CROSS  
M C LAYOUT, VIJAYNAGAR  
BENGALURU – 560 040.
13. DR. SHARANBASAPPA S. KARBHARI  
SON OF SIDRAMAPPA KARBHARI  
AGED 52 YEARS  
C/C KARBHARI HOSPITAL  
NEAR TOYOTA SHOWROOM  
SWASTIK NAGAR, RING ROAD  
GULBARGA – 585 105.
14. DR. SHANTESH PATIL  
SON OF PATIL A.M.,  
AGED 50 YEARS  
RESIDING AT "SHIVASHREE"  
H.NO.1-1496/3  
GODUTAI NAGAR  
KALABURAGI – 585 102.

15. DR. VEERABHADRAIAH T.A.  
SON OF LATE CHIKKAADAVAPPA  
AGED 53 YEARS  
RESIDING AT "MUNAL", 7<sup>TH</sup> CROSS  
VIDYANAGAR, TUMAKURU - 572 103.

**... RESPONDENTS**

(BY SRI Y.H.VIJAYKUMAR, AAG A/W  
SRI SHIVAKUMAR R. TENGLI, AGA FOR R1 & R2;  
SRI. R.C.NAGARAJ, ADVOCATE FOR R3;  
SRI DORERAJ & SRI S.S.MAMADAPUR, ADVOCATES  
FOR R4 TO R15)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENT NO.2 HEREIN NOT TO ACT UPON THE LIST OF MEMBERS FOR THE PURPOSE OF ELECTION TO THE MEMBERS OF KARNATAKA MEDICAL COUNCIL PREPARED BY HIM, THE COPY OF EXTRACT OF PORTION OF WHICH IS AT ANNEXURE-B; AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 09.03.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

### **ORDER**

The kernel of this conundrum is the manner of conduct of elections to the Karnataka Medical Council

(referred to as 'the Council' for short) by the 2<sup>nd</sup> respondent/Returning Officer.

2. Shorn of unnecessary details, facts material for consideration of the *lis* are as follows:-

The petitioner is a registered member of the Karnataka Medical Council, his registration is renewed from time to time as per law and is presently subsisting. The petitioner has approached this Court in this writ petition raising a challenge to the action of the 2<sup>nd</sup> respondent/Returning Officer in not acting upon list of members for the purpose of election to the Members of Council as furnished by the Council and has sought a direction for preparation of electoral list and conduct of elections in accordance with law.

3. It transpires that elections to the Council had not taken place which led to few members of the Council, filing a writ petition before this Court in Writ

Petition Nos.40880-40882 of 2017 seeking a mandamus at the hands of this Court to hold elections as per the Karnataka Medical Registration Act, 1961 (hereinafter referred to as 'the Act' for short). This Court disposed of the writ petition by its order dated 12-12-2018 directing the 2<sup>nd</sup> respondent to conduct elections in a manner indicated therein.

4. Before the elections could commence, the Rules were amended with regard to appointment of a Returning Officer who was to be an officer of the Co-operation Department, not below the rank of a Joint Registrar of Co-operative Societies. On such amendment, the second respondent was appointed as Returning Officer who issued calendar of events on 25-11-2019 for conduct of elections to the Council. Two other writ petitions were pending consideration at the hands of the Principal Bench of this Court when the

calendar of events were notified by the second respondent.

5. Certain orders were passed in those writ petitions directing the Returning Officer to include those names of the members of the Indian Medical Association whose names were directed to be continued and not deleted by this Court.

6. On the strength of the said direction, the Returning Officer notified the electoral list for conduct of elections to the Council by adding 37,298 members as voters to be eligible to vote in the elections to the Council. It is this action of the Returning Officer that was called in question in this writ petition. This Court by an order dated 17-01-2020 directed conduct of elections only in terms of the list given by the third respondent - Council. This was modified on 20.01.2020 and the Returning Officer was given liberty to proceed with the elections in terms of the Karnataka

Medical Registration Rules, 1963 (hereinafter referred to as the 'Rules' for short). Elections were held on 23.01.2020 as scheduled and counting of votes was also done on 25.01.2020. The matter was again listed before the Court on 17.02.2020. This Court by a detailed order directed that the results of the election should not be given effect to. The said order is in subsistence even as on date and the results of the election have not been given effect to.

7 Heard Sri Ameet Kumar Deshpande, learned Advocate for the petitioner; Sri Y.H. Vijay Kumar, learned Additional Advocate General along with Sri Shivakumar R. Tengli, learned Additional Government Advocate for Respondent Nos.1 and 2; Sri R.C.Nagaraj, learned Advocate for respondent No.3; Sri Doreraaj and Sri S.S.Mamadapur, learned Advocates for respondent Nos.4 to 15.



8. The learned counsel appearing for the petitioner Sri Ameet Kumar Deshpande would submit that the entire process is tainted by illegality committed by the Returning Officer right from the word go. He would contend the following:

*That the Returning Officer added list of voters that neither belonged to the list given by the Indian Medical Association or the Karnataka Medical Council; that the Returning Officer named 37298 as voters in the election on his own volition; that the statute requires a particular mode of publication of names which is completely violated by the Returning Officer as the names of voters that he has added is notified on his own website; Despite specific directions by this Court on two occasions neither the State nor the Returning Officer have produced documents or filed affidavits in compliance with the order passed by this Court on 08.01.2021 and 17.02.2021; that this would clearly vindicate the his contention that*

*there is fraud played in the conduct of elections by the Returning Officer.*

In substance, the submission of the learned counsel is that the entire election process is vitiated by fraud played by the Returning Officer.

9. On the other hand, the learned Additional Advocate General Sri Y.H. Vijay Kumar, vehemently refuting every one of these contentions would contend the following:

*The petitioner has no locus to file the writ petition on his sheer conduct; the petitioner knowing fully well the process of election initiated by the Returning Officer with eyes wide open participated in the process; he loses the election, turns around and challenges the election process; the petitioner cannot approbate and reprobate in accepting the process of election and later challenge the same.*

Insofar as the contention of fraud the learned Advocate General would submit that the action of the Returning Officer in notifying the names or any other method adopted is in consonance with the Act and the Rules and within the parameters stipulated. It is his emphatic submission that the Returning Officer has never transgressed his jurisdiction beyond what the law permitted.

10. Learned counsel Sri Doreraaj, appearing for the impleading applicants who sought to get themselves impleaded into this proceeding and who were permitted to come on record only to assist the Court would also adopt the submissions of the learned Additional Advocate General and would submit that the petitioner has a remedy of filing a dispute under the statute since the election to the council is already over and once elections are over the writ petition would not be maintainable unless the petitioner exhausts the

statutory alternative remedy provided under the statute. It is his submission that the writ petition be dismissed on this ground alone.

11. I have given my anxious consideration to the rival submissions made on behalf of the parties and have perused the material on record, in furtherance whereof, the following points arise for my consideration:

*“(i) Whether the writ petition suffers from want of maintainability on two counts?*

*(a) Estoppel on the part of the petitioner;*

*(b) Elections being over, the petitioner has to raise an election dispute under the Rules.*

*(ii) Whether the elections conducted are vitiated by fraud on the part of the Returning Officer?”*

12. In the peculiar facts of the case, I deem it appropriate to consider point No.2 at the outset.

**Point No.2:**

*Whether the elections conducted are vitiated by fraud on the part of the Returning Officer?*

Since the *lis* revolves around the conduct of election to the Karnataka Medical Council in terms of the provisions of the Karnataka Medical Registration Act, 1961, certain provisions of the Act which are germane are extracted for the purpose of ready reference:

**STATUTORY FRAMEWORK:****KARNATAKA MEDICAL REGISTRATION ACT, 1961:**

13. The Karnataka Medical Council is established under the Karnataka Medical Registration Act, 1961. All registered medical practitioners registered under the Act are members of the Karnataka Medical Council. Section 12 of the Act mandates the Registrar of the Council to maintain a register of medical practitioners

in the manner depicted under Section 12. Section 12 of the Act reads as follows:

*“12. **Registrar.**- The Registrar shall keep a register of medical practitioners in such form as may be prescribed by rules, in accordance with the provisions of this Act. It shall be the duty of the Registrar under the orders of the Medical Council to keep the registrar correct and from time to time to enter any necessary alterations in the addresses of person registered and to enter any additional qualification which any registered person may have obtained subsequent to his registration, and to strike off the names of all registered persons who have died.”*

Section 13 deals with registration of medical practitioners. Section 13 reads as follows:-

*“13. **Registration of Medical Practitioners.**-(1) Every person who holds any of the medical qualifications included in the schedules to the Indian Medical Council*

*Act, 1956 (Central Act 102 of 1956), may apply to the Registrar giving a correct description of his qualifications, with the dates on which they were granted, and present his degree, diploma or licence along with a fee of fifteen rupees for being registered under this Act. The Registrar shall if satisfied that the applicant is entitled to be registered, enter his name in the register:*

*Provided that the Registrar shall on application and on payment of a fee of two rupees enter the names of medical practitioners registered under any of the enactments repealed by section 34 and included in the registers maintained in accordance with the provision of the said repealed enactments as adapted by the Karnataka Adaptation of Laws Order, 1956.*

*(2) The Medical Council may refuse to permit the registration of any person who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1898 (Central Act V of 1898), or any other law for the time being in force, or who after due*

*inquiry has held guilty by the Karnataka Medical Council or by the Medical Council of any other State in India of infamous conduct in any professional respect.”*

Section 19 deals with renewal of registration of medical practitioners and reads as follows:-

**“19. *Renewal of registration.***- (1) *Notwithstanding anything contained in section 13, each medical practitioner shall pay to the Medical Council on or before the thirty-first day of December of every year, a renewal fee of two rupees for the continuance of his name in the register.*

*(2) If the renewal fee is not paid before the due date, the Registrar shall remove the name of the defaulter from the register:*

*Provided that the name so removed may be re-entered in the register on payment of the renewal fee in such manner and subject to such conditions, as may be prescribed by rules.”*



The cluster of the afore-extracted Sections of the Act deal with registration of a medical practitioners, maintenance of register by the Registrar of the Council and renewal of such registration along with the time and manner of such renewal. In terms of Section 13 every person who holds any of the medical qualifications which are included in the Schedule to the Indian Medical Council Act, 1956 shall make an application under Section 13 and the Registrar, if satisfied, that such applicant is entitled to be registered would enter his name in the register maintained under Section 12. Members whose registration has expired or would expire are required to renew under Section 19. Section 19 mandates that each medical practitioner will have to make certain payment on the 31<sup>st</sup> day of every year a renewal fee for continuance of his name in the register. Sub-section (2) of Section 19 further mandates that if renewal fee is not paid before 31<sup>st</sup> December of every year, the Registrar shall remove the name of such

defaulter from the register and a re-entry of his name can take place only subject to the conditions stipulated or prescribed under the Rules. The aforesaid statutory frame work deals with registration of medical practitioners and it is those medical practitioners who are registered and whose names are found in the register under Section 12 are allowed to be considered as voters in the election to be conducted for the Medical Council. It is the afore-extracted provisions of the Act that are germane for consideration of the issue in the *lis*.

**KARNATAKA MEDICAL REGISTRATION RULES,**

**1963:**

14. Since the marrow of the *lis* is with regard to the conduct of elections, the Rules that are germane for consideration are required to be noticed. Karnataka Medical Registration Rules, 1963 (hereinafter referred to as 'the Rules for short) are framed by the State

Government in exercise of powers conferred under Section 31 of the Act. Rule 4 deals with preparation of electoral roll for election of members for registered practitioners and reads as follows:-

***“4. Electoral roll for election of members by the registered practitioners.-***

*(1) In the case of election of members by the Medical Practitioners registered under the Act referred to in clause (a) of sub-section (2) of Section 3, the Registrar shall be Returning Officer. The list of Medical Practitioners published under sub-section (1) of Section 26 in the year in which elections are to be held shall, constitute the preliminary electoral roll for the purpose of election of members under clause (a) of sub-section (2) of Section 3.*

***(2) The Returning Officer shall publish a notice in the Official Gazette specifying the mode in which and the time within which claims and objections relating to the entries or omissions in the preliminary electoral roll shall be preferred.***

*(3) On or after the date fixed for the receipt of the claims and objections, the Returning Officer shall pass orders in writing on each claim or objections and revise the preliminary electoral rolls in accordance with such orders and rolls, as so revised, shall be the final electoral roll. The additions or deletions made while revising the rolls shall be published in the Official Gazette.”*

*Rule 5 deals with Electoral Roll for election of members by the Faculties of Medicine of the Universities and reads as follows:-*

**“5. Electoral Roll for election of members by the Faculties of Medicine of the Universities.** – (1) *In the case of election of members by the Members of the Faculties of Medicine of the Universities, referred to in clause (b) of sub-section (2) of Section 3, the Registrar who shall be the Returning Officer, shall address the Registrars of the Universities established by law in force in the State of Karnataka to furnish a list of members of the Faculties of Medicine of the*

*University as on a date to be specified and other receipt of such list arrange the names of the members in alphabetical order. Such a list shall constitute the preliminary electoral roll for the purpose of election of members under clause (b) of sub-section (2) of Section 3 and it shall be published in the Official Gazette.*

*(2) The procedure indicated in sub-rules (2) and (3) of Rules 4 mutatis mutandis apply in respect of the preliminary electoral roll published under sub-rule (1)."*

*(emphasis supplied)*

Rule 19 deals with disputes regarding election which directs that validity of an election shall be presented to the Returning Officer by any candidate who would forward the same to the competent authority for adjudication. Relevant portion of Rule 19 reads as follows:-

*"19. Disputes regarding election. – (1)  
An election petition challenging the validity of any election shall be presented to the*

*Returning Officer by any candidate at such election within fifteen days from the date of publication of the results under Rule 18 in the Official Gazette. An election petition --*

- (a) shall be accompanied by as many copies as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition;*
- (b) shall contain concise statement of material facts on which the petitioners relies;*
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the verification of pleadings.”*

The afore-extracted statutory frame work deals with preparation of electoral rolls for the purpose of election up to consideration of disputes regarding election.

Rule 43 deals with procedure for renewal of registration of a medical practitioner in terms of the Act. Rule 46 is the provision for filing of an appeal against the order of renewal of registration. Rules 43 and 46 read as follows:-

*“43. **Renewal of Registration.** – Each Medical Practitioner registered under the Act shall apply to the Medical Council well in time with a renewal fee of rupees two paid on or before the 31<sup>st</sup> day of December of every year for the continuance of his name in the register.*

**AMENDMENTS TO THE ACT AND THE RULES:**

15. Certain amendments to the Act and the Rules have taken place from time to time and insofar as they are germane are to be noticed. The State amended the Act in the year 2002 by the Karnataka Medical Registration (Amendment) Act, 2003 (for short ‘the Amending Act’). Section 7 of the Amending Act which

amended Section 13 of the Principal Act reads as follows:-

*“7. Amendment of Section 13.- In Section 13 of the principal Act –*

- (a) in sub-section (1),*
  - (i) for the words “a fee of fifteen rupees” the words “prescribed fee” shall be substituted;*
  - (ii) in the proviso, the words “a fee of two rupees” the words “a prescribed fee” shall be substituted.*
- (b) In sub-section (2), for the words, figures and bracket the Code of Criminal Procedure 1893 (Central Act V of 1898) “the words, figures and brackets “the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)” shall be substituted.*

Section 11 of the Amending Act which amended Section 19 of the Principal Act reads as follows:-

**11. Amendment of Section 19.** – *In Section 19 of the principal act –*



- (1) *in sub-section (1), for the words “ on or before the thirty first day of December of every year a renewal fee of two rupees” the words “a prescribed fee on or before such date as may be prescribed” shall be substituted.*
- (2) *after sub-section (1), the following proviso shall be inserted, namely:*

*Provided that the renewal of registration shall not be done unless the registered Medical Practitioner produces a certificate for having attended the Continuing Medical Education programme for not less than one hundred hours conducted by an organization or institution recognized by the Medical Council.*

*(emphasis supplied)*

In terms of amendment to Section 19 of the principal Act, the renewal of registration cannot be done unless the registered medical practitioner produces a certificate for having attended a continuing medical education

programme of not less than 100 hours in a recognized institution by the Medical Council. The aforesaid amendment of 2003 in terms of Act 43 of 2003 was brought into force only on 1<sup>st</sup> March 2012 by a Notification issued by the State Government on 13-02-2012 which reads as follows:-

*“In exercise of the powers conferred by sub-section (2) of Section 1 of the Karnataka Medical Registration (Amendment) Act, 2003 (Karnataka Act 43 of 2003), the Government of Karnataka hereby appoints the 1<sup>st</sup> day of March 2012 as the date on which all the provisions of the said Act shall come into force.”*

The Act was further amended in the year 2017 by Act 19 of 2017 in terms of the Karnataka Medical Registration (Amendment) Act, 2017. The said Amending Act substituted Section 19 by the following section which reads as follows:-

**“19. Renewal of Registration.- (1)**

*Every Medical practitioner shall once in five years renew his registration by paying prescribed fees to the medical Council. For renewal of registration such applicant shall submit his application in such manner along with the evidence to the effect that he has participated or attended to a minimum of thirty credit hours of continued Medical Education Programme (one credit hour = four hours of continued Medical Education Programme) not less than six credit hours per year over a period preceding five years in any recognized Medical Conference or Seminar or Workshop or Continued Medical Education approved in this behalf by the Karnataka Medical Council.*

*(2) The Medical Practitioner who fails to renew his registration under sub-section (1) shall cease to be a registered practitioner under sub-section (1) of Section 13, the Registrar shall remove the name of such practitioner from the Register maintained under Section 12.*

*Provided that participation in such continued Medical Educational Programme shall not be necessary in respect of such class of Medical Practitioners as may be prescribed.*

*Provided further that the name so removed may be re-entered in the register on payment of the renewal fee in such manner and subject to undergoing continued Medical Education Programme specified in sub-section (1).*

*(emphasis supplied)*

The Rules were amended by Government on 31-08-2019. It is in these amending Rules for the first time the Returning Officer to be appointed to conduct elections of the council was to be an officer of the Department of Co-operative Societies not below the rank of Additional Registrar or Joint Registrar of Co-operative Society or a KAS (Senior Scale) Officer. This amendment was in terms of Karnataka Medical Registration (Amendment) Rules, 2018 and it reads as follows:

**“2. Amendment of Rule 4. –** In Rule 4 of the Karnataka Medical Registration Rules, 1963 (hereinafter referred to as the said rules), -

(i) for sub-rule (1), the following shall be substituted, namely:-

“(1) The list of Medical practitioners registered under the Act referred to in clause (a) and clause (b) of sub-section (2) of Section 3 of the Act. An Officer of the Department of Co-operative Societies not below the rank of Additional Registrar or Joint Registrar of co-operative Societies or KAS Officer (Senior Scale) shall be the returning officer.

(1A) The list of Medical practitioners published under sub-section (1) of Section 26 of the Act in the year in which elections are to be held shall, constitute the preliminary electoral roll for the purpose of election of members

*under clause (a) of sub-section (2) of Section 3 of the Act;*

*Provided that, a separate Electoral Roll shall be maintained Revenue Divisionwise as per their address mentioned in the Medical Council Ledger”.*

*(ii) in sub-rule (2), after the words “shall be preferred”, the words “and shall be published on the notice board and on the official website of the Medical Council pertaining to each revenue division prior to the process of Election” shall be inserted; and*

*(iii) in sub-rule (3), for the words “Official Gazette”, the words “Official Gazette or on the notice board and on the Official website of the Medical Council” shall be substituted.*

Rule 4 came to be amended by mandating the appointment of the rank of Additional Registrar, Joint

Registrar or a KAS Officer be the returning officer. The Amending Rule 6 substituted Rule 8 of the principal rule by the following rule:

***“6. Substitution of Rule 8.- For rule 8 of the said rules, the following shall be substituted, namely:-***

***“8. Qualification for election as members.- Every person whose name is entered in the final electoral rolls maintained revenue division wise, published under rules 4, 5 and 6 respectively shall, unless disqualified under Section 7 of the Act be qualified to be elected as a member from the respective revenue division constituency to which the electoral roll relates.”***

In terms of the substituted Rule every person whose name is entered in the final electoral roll maintained revenue division wise shall be published unless disqualified to be elected as a member of the respective revenue division. The amending Rules of 2018

substituted Rule 43 which dealt with renewal of registration and the Amending Rule read as follows:-

*“16. **Substitution of Rule 43.**- For rule 43 of the said rules, the following shall be substituted namely:-*

*“43. **Renewal of Registration.** – Each medical practitioner registered under the Act shall apply to the Medical Council with a renewal fee of rupees one thousand and on or before the 31<sup>st</sup> day of December of every five years for continuation of his name in the register.”*

*(emphasis supplied)*

The issue in the *lis* is to be considered on the bedrock of the afore-extracted mandate of the statute or the statutory frame work for conduct of elections to the Council.

#### **JUDICIAL PROCEEDINGS:**

16. At the time when the term of the incumbent Council was to come to an end, various members of the



Council knocked the doors of this Court for a direction to conduct elections to the Council. The first of the writ petitions that were filed in the year 2016 were Writ Petition Nos. 48880-48882 of 2016. This Court disposed the writ petition on 12-12-2018 by giving the following directions:

*“6. Having heard counsel for the parties, it is undisputed fact that the election to the Karnataka Medical Council was conducted in the year 2011 and the term of office of the President, Vice-President and other members came to be expired in the month of September 2016. But, according to the learned counsel for the respondents, it expires in the year 2018, in view of pendency of certain proceedings before this Court. Admittedly, as on to-day, respondents are bound to conduct the elections to the Karnataka Medical Council, in view of the provisions of Section 5 of the Act. In view of the affidavit filed by the Under Secretary to the Government, Department of Medical Education, there is no impediment for the*

*respondents to conduct the elections, immediately after approval of the amended Rules by the State Government.*

***7. In view of the aforesaid reasons, the writ petitions are allowed. The respondents are hereby directed to take a decision with regard to proposal of amendment of Karnataka Medical Registration Rules, within a period of two months from to-day and if such approval is made by the State Government, the 2<sup>nd</sup> respondent shall initiate proceedings to conduct elections, strictly in terms of the provisions of the Karnataka Medical Registration Act, 1961 and Rules, 1963 and the Amended Rules, if any, and proceed in accordance with law.”***

*(emphasis supplied)*

In terms of the directions issued by this Court, the proposal for amendment to the Medical Registration Rules was to take place within two months from the

date of passing of the aforesaid order. The term of the Council was to expire in 2018. A further direction was issued to the 2<sup>nd</sup> respondent/Council to conduct elections quickly in terms of the Act and the Rules.

17. It is after the order passed by this Hon'ble Court in the said writ petition, the amendment to the Rules took place on 31-08-2019 which is extracted hereinbefore. Once amendment to the Rules took place certain applications were filed in pending writ petitions before this Court seeking inclusion of names of the members of the Indian Medical Association to become eligible to vote in the ensuing election of the Council. This Court by its order dated 10-01-2020 in Writ Petition No.40580 of 2017 on I.A.No.1 of 2019 seeking certain directions, was pleased to direct as follows:

*“Sri Ravishankar, learned Advocate for respondent No.4 submitted that Returning Officer has power to determine eligibility of voters. Objections or claims can be filed by*

*the doctors before the Returning Officer on or before 17-04-2020 and the Returning Officer will pass suitable orders in accordance with Rule 4 of the Karnataka Medical Registration Rules, 1963.*

*He further submitted that as per provisional list there are about 1,32,000 doctors in our State as on 15-12-2019.*

***This Court has passed an interim order on 11.09.2017 and restrained respondent No.1 from cancelling registration of members of petitioner No.1- Association. As per Returning Officer, names of 1,32,000 doctors is found in the provisional list and there is no cancellation of registration of any doctor as such.***

*Having heard on both sides, it would be appropriate to direct petitioners to file their claims/ objections before the Returning Officer.*

***Accordingly, it is ordered that petitioners shall be at liberty to file claims or objections before the Returning Officer and the same shall be considered as per Rule 4(3) and suitable orders passed in accordance with law by the Returning Officer.”***

*(emphasis supplied)*

In terms of the directions (supra) this Court observed that an interim order had been passed on 11-09-2017 restraining respondent No.1/Council from cancelling the registration of members of the petitioner/Association – the petitioner Association was the Indian Medical Association Karnataka State Branch (hereinafter referred to as ‘the IMA members’ for short). The Court recording that as per the affidavit filed by the Returning Officer names of **1,32,000** doctors were found in the provisional list as their names had not been cancelled in the light of the interim order of this Court directed the Returning Officer to consider the

names of the IMA members as per Rule 4(3) and pass suitable orders in accordance with law.

18. Even before the ink could dry on the orders passed by this Court, on the very evening of the day, the Returning Officer notified a separate electoral voter list adding neither the members indicated in the order of the Court nor that furnished by the Council. But, on his own declared 37,298 voters to be eligible voters to vote in the ensuing elections of the Council over and above 42,014 voters given by the Council.

19. This led to the filing of the present writ petition before this Court seeking following prayers and interim prayer:

- (i) *Direct the respondent No.2 herein not to accept upon list of members for the purpose of election to the members of Karnataka Medical Council prepared by him, the copy of extract portion of which is at Annexure-B.*

- (ii) *Direct the respondent No.2 herein to prepare a list in conformity with the list published by the Registrar of Karnataka Medical Council under Section 26 of the Karnataka Medical Registration Act, 1961 and to permit only such persons whose registration is renewed as per law and whose names are enlisted in the list published under Section 26 of the Karnataka Medical Council Registration Act, 1916, for the purpose of contesting and voting in the election to the post of member of Karnataka Medical Council in the election to be held on 23-01-2020, the copy of extract of portion of which list is at Annexure-A;*
- (iii) *Issue any other appropriate writ, order or direction as this Hon'ble Court may deem fit to grant in the circumstances of the case, in the interest of justice.*

INTERIM ORDER

*It is most humbly prayed that this Hon'ble Court may be pleased to issue an interim direction, directing the respondent No.2 herein to permit only such members to contest and vote in the election to the post of members of Karnataka Medical Council in the election to be held on 23.01.2020, whose names are found in the list published by the Registrar of Karnataka Medical Council as per Section 26 of the Karnataka Medical Registration Act, 1961, the copy of the extract of which is at Annexure-A, and the entire details of which are found in the official website of the Karnataka Medical Council, pending final disposal of this writ petition, in the interest of justice."*

This Court on 17-01-2020 on hearing passed a detailed order, operative portion of which reads as follows:

*"Having perused the provisions of the Karnataka Medical Registration Act, 1961*



*prima facie it appears that second respondent/Returning Officer has ventured into usurping the powers of third respondent by preparing a list as per Annexure-C which is not permissible under the Act.*

***In that view of the matter, the second respondent is directed to proceed with the election as per the extract furnished by the petitioner as per Annexure-A which is also published in the official Website of the Karnataka Medical Council.”***

*(emphasis supplied)*

This Court *prima facie* observing that the Returning Officer had ventured into usurping the powers of the 3<sup>rd</sup> respondent/ Registrar of the Council had prepared his own voters list directed that election should proceed only as per the list furnished by the petitioner in terms of Annexure-A to the petition which was published in the official website of the Council. Applications were filed immediately seeking vacation of the interim order so granted and the matter came up for its consideration.

20. On 20.01.2020 and this Court modified the order, relevant portion of which reads as follows:

*“Insofar as vacating application is concerned, heard the counsel appearing for the parties at length. The counsel appearing for respondent Nos.4 and 5 would vehemently argue and would rely on the amendment to Rule 4 of the Karnataka Medical Registration (Amendment) Rules, 2018 (for short ‘the Rules’). As per amended provisions to Rule 4 of Rules, now Rule 4(2) clearly empowers the Returning Officer to hear any grievance of the members who are omitted from the preliminary list. On perusal of above noted Rules, on an objection by particular member who is omitted from the preliminary list, the Returning Officer is empowered and authorized to examine the objections under Rule 4(3) of the said amended Rules. Under Rule 4(3) of the Rules the Returning Officer after examining the claims and the objections, the Returning Officer is required to pass an order in writing on each claim or objections and thereafter proceed to prepare a revised*

*preliminary electoral roll in accordance with such orders and the electoral roll, so revised shall the final electoral roll.*

*By relying on this amended Rules, he would vehemently argue and contend that the respondent Nos.4 and 5 had immediately approached the Returning Officer by raising an objection and after hearing their claims and objections, a separate order is passed by the Returning Officer. **Their claims are decided strictly in terms of the provisions of Rule 4(2) and (3) of the amended Rules, 2018 and to buttress his arguments, he also takes this Court at page 165 of the vacating application where an order is passed. In that view of the matter, this Court is of the view that the respondent Nos 4 and 5 are eligible to participate in the election to be held on 23-01-2020.***

*It is needless to state that the Returning Officer shall permit all those members whose claims are independently examined and separate orders are*

***passed strictly in terms of Rule 4(3) of the Amended Rules, 2018 and thereafter their names are entered in the revised list pursuant to separate order.***

*Extract of copy may be furnished to the learned Additional Government Advocate.”*

*(emphasis applied)*

This Court modified the order directing the Returning Officer to permit all those members whose claims are independently examined and separate orders are passed strictly in terms of Rule 4(3) of the Amended Rules of 2018 and thereafter their names were entered in the revised voters list. The matter after the conduct of elections was again considered by this Court on 17.02.2020 and the following order was passed:

**“ORDER ON I.A.NO.3/2020**

*Heard the learned counsel for the petitioner, learned Additional Government Advocate appearing for respondent Nos.1 and*

*2 and Sri Doreraj learned counsel appearing for respondent Nos.4 and 5.*

*The petitioner has filed an application in I.A.No.3/2020 seeking direction against respondent No.2 not to give effect to the results of the election held to the post of Member of Karnataka Medical Council, declared by respondent No.2 on 25.01.2020. In support of his contention, the counsel for petitioner would vehemently argue and submit to this Court that respondent No.2/returning officer has prepared the revised list contrary to the amended provisions of Rule 4 sub-rule (3) and (4) of the Karnataka Medical Registration Rules, 1963. This Court by order dated 20.01.2020 had directed the respondent No.2/returning officer to include the members in the revised list by strictly following the procedure contemplated under Rule 4(3) of the amended Rule 2018. The grievance of the petitioner is that respondent No.2 has prepared the revised list in gross violation of direction of this Court and*

*also contrary to the provisions contemplated under the Rules.*

*This matter was listed on 04.02.2020, respondent No.2 was directed to file affidavit stating that the revised list is prepared strictly in terms of the amended provision and also by following the direction of this Court. Till this date no affidavit is filed. Prima facie the allegations made in the petition appears to be true. In that view of the matter, this matter requires reconsideration. Accordingly, I.A.No.3/2020 is allowed.*

***The respondent No.2/returning officer is directed not to give effect to the results to the election held to the post of Member of Karnataka Medical Council, declared by respondent No.2 on 25.01.2020.***

*Extract the copy of this order to the learned Additional Government Advocate, forthwith."*

This Court by the aforesaid order dated 17.02.2020 noticing the fact that elections were held on 23.01.2020, counting of votes had completed on 25.01.2020 directed that the result of the election shall not be published and therefore, the result of the election is yet to be published in terms of the aforesaid order which is in operation even as on date.

21. Long after passing of the said order, the matter was re-listed on 10-03-2020 and this Court observing that plethora of documents had been placed on record along with a compact disc relating to voters list and objections passed the following order:

*“The Joint Registrar of Co-operative Society pursuant to the interim order made earlier has filed the affidavit along with compact disks at Annexures R22 and R23. He has also produced two bag full of the records relating to voters list and the objections pursuant to which the list is stated to have*

*been revised. The said bag full of records to be returned to the learned AGA.*

*Counsel for the petitioner is permitted to look into the records in the office of and in the presence of learned AGA during reasonable times and to make notes as well. It is open to the counsel for the petitioner to take photograph/videograph of relevant papers in the said bags without causing damage thereto.*

*Call this matter on 17-03-2020 as desired by both the sides.”*

The case was again re-listed on 8-01-2021. This Court noticed several anomalies in the preparation of voters list for conduct of election and passed the following order for resolution and determination of the controversy. The said order dated 8.01.2021 reads as follows:-

- “1. I.A.No.4/2020 has been filed by the proposed respondent Nos. 6 to 15, they claim to be registered Medical*



*Practitioners and candidates in the election held to the Karnataka Medical Council. By way of order dated 17-02-2020, this Court directed respondent No.2 to give effect to the election results.*

2. ***Considering the above matter relating to the Karnataka Medical Council that any order passed by this Court would have an effect on respondent Nos. 6 to 15, the said application is allowed to the limited purpose of bringing them on record for the purpose of assistance on deciding the matter and espouse their cause. Accordingly, I.A.No.4 is allowed.***

3. *The memo is filed by the petitioner for bringing on the record death of two doctors, who were stated to have died in the year 2014 and 2002. The said memo is taken on record.*

.. .. .

14. *In view of the aforesaid observations, for the purpose of determining the controversy in the above matter, it is required for the respondent No.3 to produce the register maintained by the respondent No.3 which would indicate:*

14.1 *Name of the medical practitioner.*

14.2 *Date of registration.*

14.3 *Date of renewal.*

14.4 *Date on which renewal fee has been paid.*

14.5 *The date on which the name of the practitioner has been removed from the Register.*

14.6 *If any appeal filed, details thereof.*

14.7 *Re-inclusion for re-registration of the name of the medical practitioner.*

14.8 *The date of such re-inclusion.*

14.9 *Re-registration.*

14.10      *The date on which the 3<sup>rd</sup> respondent received information from the Sub-Registrar as regards the death of the medical practitioner.*

14.11      *The date on which the name of the medical practitioner was removed from the register.*

14.12      *The date on which any medical practitioner was removed for any other reason.*

14.13      *The name and date on which the medical practitioner was included in the list for any other reason.*

**15. Similarly respondent No.2 is also required to be directed to produce a list of the electoral rolls as regarding the Karnataka Medical Council prepared on the basis of the information received from the 3<sup>rd</sup> respondent-Registrar KMC and any alterations or changes made thereto on the basis of any representations and objections received in regard to**

***the said list in terms of Rule 4 of the Rules.***

***16. Both Sri Nagaraj, learned counsel for respondent No.3 and Sri Shivakumar.R.Tengli, learned counsel for respondent No.2 respectively submitted that the said details would be made available to this Court and the petitioner by 05-02-2021.***

*Relist on 12-02-2021.”*

*(emphasis supplied)*

In terms of the said order a detailed direction was issued for production of the register maintained by the Council which would indicate the names of Medical Practitioners up to the preparation of voters list. However, despite a clear direction as to the position in terms of the order dated 8-01-2021, the counsel filed a memo on 5-02-2021 giving details by way of pen-drive with regard to members as on 31-12-2019. In terms of the direction, the third respondent Council complied by production of entire documents with regard to the list of members as on 31.12.2019 as directed by this Court

through a pendrive. According to the counsel 61270 of respondent No.3 would become eligible to vote which included teaching and non-teaching. The Returning Officer had also filed an affidavit on 4-02-2021 in terms of directions dated 8-01-2021. The Returning Officer did not comply with the directions given on 08.01.2021 and stuck to his stand that he has already filed an affidavit earlier. Even then, the Court not being satisfied in the manner in which compliance was done by the respondents passed an order on 17-02-2021 which reads as follows:-

- “1. This Court by a detailed order dated 08-01-2021 had directed the respondents to produce the documents and details as detailed therein. Despite the same, the said details have not been produced, more so, the details mentioned in para-14 thereof.*
- 2. Sri Shivakumar.R.Tengli, learned counsel for Returning Officer would submit that he has filed a memo on 04-02-2021 furnishing the details sought for in the order dated 08-01-2021.*

3. *A perusal of the same indicates the gross indifference with which the said details, memo and affidavit has been filed by the Returning Officer. Most of the details directed to be produced in the order dated 08-01-2021 have not been produced. **The Returning Officer being under a cloud in these proceedings for having acted in a manner contrary to the procedure prescribed under the Karnataka Medical Registration Act and Rules, it was but required for the Returning Officer to furnish the details.***
4. *The Karnataka Medical Council – Respondent No.3 has filed a memo on 05-02-2021 giving certain details enclosing two pen drives with regard to the details of the members in terms of the said memo filed by the respondent No.3 as on 31-12-2019. There are 61270 members of the respondent No.3 who would be eligible to vote, which*

numbers includes teaching and non-teaching members. However, as per the memo filed by the Returning Officer, the Returning Officer claims that the list given by the respondent NO.3-KMC was only 42,014 of practicing members to which the Returning Officer has added 36,678 members.

5. On enquiry, Sri ShivakumarTengli, learned counsel is unable to give the details as to how those members have been added. Hence, Sri Doreraj, learned counsel appearing for impleading applicant tried to support the case of the Returning Officer by stating that these members are added on account of the orders passed by this Court earlier by including the members of the IMA who have been excluded from the list of the KMC. **It is rather surprising that 36,678 members have been added, which is virtually double the number given by the KMC-respondent No.3.**

6. *The affidavit filed on 04-02-2021 by the Returning Officer is only a table of numbers without any explanation except stating that all objections have been considered on case to case basis and orders were passed. To support this, it is stated that the said order was passed on 07-01-2021 produced at Annexure-R12 to the application for vacating stay filed by the proposed respondent on 02-01-2020.*

**7. *A perusal of the order dated 07-01-2020 appears to be as vague as it can be. Though Returning Officer has stated that he has considered the objections on case to case basis, the said order does in any manner indicate any such consideration.***

8. *Sri Ameet Deshpande, learned counsel submits that the Returning Officer is acting in collusion with certain office bearers of KMC and that there is certain investigation being carried out as*



*regards certain other aspects by Anti Corruption Bureau in relation thereto against the Returning Officer. These facts do not inspire any confidence more so when an election to KMC is to be conducted in a proper and required manner in accordance with Rules.*

9. *Sri Nararaj, learned counsel for respondent No.3 has also produced the hard copies of the list of members of the 3<sup>rd</sup> respondent as on 31-12-2019 along with the memo.*
10. *The hard copies of the same to be kept in safe custody and pen drive for having produced the same.*
11. ***One more opportunity is given to the Returning Officer to present all the facts and details called upon by order dated 08-01-2021 within a period of two weeks from to-day. The Returning Officer is also directed to be present before this Court in person to answer the***

***queries since he has apparently not furnished all details to his counsel to answer the queries of this Court.***

12. *Re-list on 08-03-2021.”*

*(emphasis supplied)*

One more opportunity was given to the Returning Officer to present all the facts and details in terms of order dated 08.01.2021 and directed presence of the Returning Officer before Court on the next date of hearing and the matter was directed to be listed on 8-03-2021. In view of the afore-extracted statutory provisions and orders passed by this Court from time to time it can safely be concluded that the issue has narrowed down in the *lis* to the conduct of the Returning Officer in conducting elections. This Court pointedly questioned the State which represented the Returning Officer and in the presence of the Returning Officer, as to why the order dated 08.01.2021 and

17.02.2021 are not complied. They would in unison categorically reply that whatever affidavit has been filed by the Returning Officer on 26.02.2020 may be taken as compliance with the orders dated 08.01.2021 and 17.02.2021 and nothing more need be said. It is rather surprising that both the State and the Returning Officer would want to stick to their stand which this Court had not accepted by its orders dated 08.01.2021 and 17.02.2021. Therefore, it has become necessary to view the conduct of the Returning Officer with a sense of strictness.

22. The story began when a writ petition was filed by the Indian Medical Association/Karnataka State Chapter and 2 other individuals against the State and the Council and interim orders being granted in those cases. This Court in Writ Petition Nos. 65861-862 of 2016 granted an interim order on 29<sup>th</sup> December, 2016 directing the Council not to cancel the registration of

the petitioners therein for non-payment of renewal fee and non-submission of application for renewal. The Court also further observed that it would not preclude the Council in taking any steps provided under the Act. IMA also preferred writ petitions wherein an interim order was granted restraining the Council from cancelling the registration of members of the 1<sup>st</sup> petitioner Association therein-IMA.

23. It is after that in another writ petition this Court directed conduct of elections on 12-12-2018. The proceeding that was pending consideration in the case of IMA in Writ Petition No.40580 of 2017 was disposed of by this Court holding that in view of the Amendment to the Karnataka Medical Council Registration Act, an officer in the rank of Joint Registrar was to be appointed as Returning Officer and also observing that the Returning Officer had already been appointed and accordingly Writ Petition No.820 of 2017 and connected

cases were disposed of on 13-02-2019. In another proceeding which was pending consideration, this Court directed the Returning Officer to consider the objections and pass appropriate orders. Therefore, the controversy has further narrowed down to the voters list.

24. The 3<sup>rd</sup> respondent maintains the voters list in terms of Section 26 of the Act (supra). In terms of Section 2 which defines who is a 'registered medical practitioner' and Section 26 directs enlistment of those persons in the list maintained under Section 12 the manner in which the Council maintains the list of registered medical practitioners is borne out from the annexure appended to the writ petition as Annexure-A. To quote an illustration, *Sl.No.1 in Annexure-A is one Dr. Akash Angadi. Name, Gender, Date of Registration and the Address of the doctor along with registration number are tabulated in the form of a badge.* This is the

‘teachers’ voters list’ that is available on the website of the Council which is produced as Annexure-A.

25. Elections were announced by issuance of calendar of events by the Returning Officer on 25-11-2019 (Annexure-B). Once the calendar of events was notified, from the date of notification of calendar of events till the date on which the interim order passed for the first time in this petition on 17-01-2020 is the period in which the action of the Returning Officer that is to be considered in the writ petition. Elections were directed to be held on 23.01.2020 and counting of votes on 25-01-2020. This Court on 10-01-2020 directed that names of IMA members should not be deleted and the Returning Officer was directed to consider objections filed to the said list and pass appropriate orders. This order was passed on 10-01-2020.

26. Even before the said order was passed, the Returning Officer claims to have considered the objections on a case to case basis and added 37298 names into voters list of the Council. The names added by the Returning Officer are found at Annexure-C. The way the voters were added to the list by the Returning Officer if juxtaposed with the list of voters maintained by the Council would in unmistakable terms indicate that the procedure stipulated under the mandate of the Act and the Rules are given a go by by the Returning Officer. The Returning Officer prepares the list according to his whim and fancy.

27. It is also germane to notice that the list of 37298 voters are added in the so called voters list prepared by the Returning Officer also contains doctors who have died and who have left the country after surrendering their registration. Therefore, the list that contains registration numbers being the voters who

have died and have left the country cannot but be said to be a fraud on the part of the Returning Officer. Names of persons and the names of doctors who have left the country being part of the list is not disputed by the Returning Officer or the State. The defence is that the list may contain one or two dead persons and a few who have left the country and surrendered the registration. This is enough circumstance to hold the conduct of the Returning Officer was in perpetration of fraud.

28. Yet another glaring circumstance that would vindicate the stand of the petitioner that the process is vitiated by fraud is that the Act requires publication of voters list on the website of the 3<sup>rd</sup> respondent/Council. The 3<sup>rd</sup> respondent/Council maintains a particular voters list as found in Annexure-A. The Returning Officer prepares a separate voters list as found in Annexure-C, which ought to have been at least notified



on the website of the Council. The Returning Officer publishes his own voters list on his website created for the purpose of election. Section 26 deals with publication of list of medical practitioners who are the voters. On 31-08-2019 the Amendment also empowered the Returning Officer to prepare the list and the list has to be prepared in the manner provided under the Rules, which is under Rule 4. Rule 4 and Rule 26 are given a complete go bye in the case at hand as the Returning Officer, has without a shadow of doubt usurped the powers conferred on the Council for preparation of list of voters in terms of Rule 4 of registered medical practitioners and in terms of Section 26 as available in the register maintained by the Council under Section 12 of the Act.

29. This Court, as extracted hereinabove, in its direction dated 10-01-2020 had clearly directed the Returning Officer to consider the claims of the

petitioners therein in terms of Rule 4(3) and suitable orders be passed. The Returning Officer even before the ink on this order could dry, notified his own list on the evening of the very same day i.e., 10-01-2020, on a specious premise that he had already considered the objections and enlisted the voters on case to case basis on 7-01-2020 and has defended his action in an affidavit filed initially on 25.11.2019 when contempt was initiated alleging non-compliance with the order passed by this Court directing conduct of elections in Writ Petition Nos. 48880-48882 of 2016; that under the threat of contempt the Returning Officer had to conclude the elections before 25-01-2020 and hence had prepared the list and notified the same. It was also contended that the 3<sup>rd</sup> respondent/Council did not co-operate with the Returning Officer for submission of list of voters.

30. All the aforesaid is made a part of the affidavit filed by the Returning Officer himself on 26-02-2020 in these proceedings. Certain paragraphs of the affidavit where the Returning Officer advances his case which reflect his conduct are extracted hereunder for the purpose of ready reference:

*“15. I state that several objections have been received directly by the Returning Officer and also through the e-mail via KMC website as per KMR Rules, 1963 4(2)(3), and through the IMA, Chamarajpet, Bangalore, complaining that thousands of names have been left out of the voters list, stating that the names have left out under the pretext of non-renewal, but such omissions are illegal and that there is no provision to do so under the KMR Act/Rules and that the members must have been informed in advance by the Council about such omissions, as is demanded by natural justice. Copy of IMA letter dated 29-11-2019 is herein produced as Annexure-R9.*

16. I state that considering the objections and as per KMR Rules 4(2) the Returning Officer shall publish a notice in the official Gazette specifying the mode in which and the time within which claims and objections relating to the entries or omissions in the preliminary electoral roll shall be preferred. Rule 4(3) says on or after the date fixed for the receipt of the claims and objections, the Returning Officer shall pass orders in writing on each claim or objections and revise the preliminary electoral rolls in accordance with such orders and the rolls, as so revised, shall be the final electoral roll. The additions or deletions made while revising the rolls shall be published in the Official Gazette.

**The objections were considered on a case by case basis and duly examining the list provided by the IMA, it was found that 19770 names from Bangalore Division, 8321 names from Mysuru Division, 4916 names from Belagavi Division and 3571 names from Gulbarga Division, a total of 36678 names from four revenue divisions, have been omitted, and it was**

***decided to consider all these omissions on a case by case basis after considering the legality of the objections and affixing signatures on a case by case basis. It was decided to discuss with the Registrar about adding these names to the voters list, excluding those names listed as dead, and those taken NOC (transferred) and including those not renewed. Copies of all the objections received by the Returning Officer are herein produced as Annexure-R10.***

*I state that the voters list published by the 3<sup>rd</sup> respondent on 12<sup>th</sup> November 2019 had a total of 49273 names in teaching and non-teaching categories, and the claims of about 27000 members of having been left out were considered as per the order of the Hon'ble HC. It is pertinent to mention here that the 3<sup>rd</sup> respondent has not published the list of practitioners on 1<sup>st</sup> January 2019 as required under the Act and Rules. **Since the Registrar of KMC has not taken any action on the claims and objections of***

***the voters, these claims and objections were examined on a case by case basis by considering the information and details of the registered practitioners available on the KMC website about the validity of their registration under the KMC, and tallying these entries with those available on the Indian Medical register available on the MCI website and also considering and confirming the facts that IMA has been the first petitioner in Writ Petition No.40580 of 2017 before the Hon'ble High Court of Karnataka, Principal Bench wherein it obtained the interim orders and examined these claims on the basis of those interim orders of the Hon'ble High Court of Karnataka. Copies of the objections received by the 3<sup>rd</sup> respondent are herein produced as Annexure-R11.***

... ..

26. I state that it was communicated that 3<sup>rd</sup> respondent to publish the names of non-renewed voters on notice board and website. I further state that it was

*communicated to 3<sup>rd</sup> respondent to comply the interim order dated 11<sup>th</sup> September 2017 of the Hon'ble High Court of Karnataka in W.P.No.40580 of 2017, as requested by the IMA, and also to write about the common order passed by the **Returning Officer as per KMR Act, 1961 4(2) and 4(3) and not to omit the names of non-renewed voters as per the order of the Hon'ble High Court and to include the names and publish the final list of non-renewed teachers and practitioners immediately on IMC website. Copy of order dated 7<sup>th</sup> January 2020 is herein produced as Annexure-R18.***

**27. I state that the 3<sup>rd</sup> respondent has not raised any objections to the orders of the Returning Officer to include the name of non-renewed persons into the final voter list.**

*31. I state that as per the order of the Hon'ble High Court of Karnataka in W.P.No.40580 of 2017 viz., "Accordingly it is ordered that petitioners shall be at liberty to*

*file claims or objections before the Returning Officer and the same shall be considered as per Rule 4(3) and suitable orders passed in accordance with law by the Returning Officer.” considering that IMA Karnataka State Branch is the first petitioner in the said writ petition, the complete list provided by the IMA and considering all the objections and claims submitted, it was decided to examine each and every voter’s name and if found valid, to prepare the final voters list as per KMR Rules 1963 4(2)(3) marked with initials of Returning Officer and assistant of Returning Officer Mr. N.Venkatesh. Copy of the list examined by the Returning Officer is herein produced as Annexure-R21.*

*32. I state that election officers were instructed to scrutinize the nominations on 13<sup>th</sup> January 2020 considering 6 criteria strictly and to follow the guidelines regarding the measures to be taken after the last chance for withdrawal of nominations at 3.00 p.m. on 17<sup>th</sup> January 2020 and to publish the names of the withdrawn candidates*



*immediately on the notice boards and to inform the Returning Officer and also to publish the names of the filed nominations by the last dated of 10<sup>th</sup> January 2020.*

... ..

*34. I state that on 16<sup>th</sup> January 2020, the details of nominations filed for teachers and non-teachers constituencies of 4 revenue divisions, polling stations for 23-01-2020, details and contact numbers of Eos of all districts and the list of rejected nominations published for the information of voters.*

.. ...

*37. I state that respondent NO.4 & 5 filed impleading applications before this Hon'ble Court, under the above circumstances this Hon'ble Court by its order dated 20<sup>th</sup> January 2020 was pleased to implead the respondent No.4 & 5 as necessary and proper party to the writ petition. The Respondent No.4 & 5 also filed an interim application to vacate the interim order dated 17<sup>th</sup> January 2020. **The Hon'ble Court was pleased to modify its earlier order dated 17<sup>th</sup>***

**January 2020 and directed the Returning Officer to include the members in the revised list by strictly following the procedure contemplated under Rule 4(3) of the amended Rule 2018.**

38. I state that after the order dated 20<sup>th</sup> January 2020, the Returning Officer has not received any fresh objections or claims. For all the previous objections received the Returning Officer had already passed common order dated 7<sup>th</sup> January 2020 and final list was prepared and published on 10<sup>th</sup> January 2020 for all the objections and claims received under Rule 4(2). Therefore there was no requirement of passing fresh orders on any objections. Thus, the Returning Officer continued to conduct elections based on the final list published on 10<sup>th</sup> January 2020. I further state that, the Returning Officer, as per the calendar of events, conducted elections on 23<sup>rd</sup> January 2020 and the election results were declared by Gazette Notification No.KMC JRCS-:2019-20 dated 25<sup>th</sup> January 2020. The election results

were declared in Gazette Notification and issued by the Returning Officer as per Rule 18 of the Karnataka Medical Registration Rules, 1963. **Once the result is gazetted the Returning Officer do not have the power to hold from not giving effect to the elected members to form the Council.**

... ..

**42. I state that as far as the objections received by the Returning Officer under Rule 4(2), after examination of each objection individually, because of thousands of objections were received a common order was passed on 7<sup>th</sup> January 2020 and subsequently on 10<sup>th</sup> January 2020. The list published on 10<sup>th</sup> January 2020 is the final voters list as per Rule 4(3) of the Amended Rules 2018.**

**44. I state that the Returning Officer could not prepare the affidavit due to paucity of time and lack of assistance to collect all the data and**

**information, thus could not file its objections and affidavit as requested by this Hon'ble Court. Therefore, this Hon'ble Court by its order dated 17<sup>th</sup> February 2020 was pleased to allow the interim application filed by the petitioner restraining the Returning Officer from giving effect to the results of the election to the post of the member of Karnataka Medical Council.**

45. I state that Rule 4(3) of the Karnataka Medical Registration Rules, 1963 says that "on or after the date fixed for receipt of the claims and objections, the Returning Officer shall pass orders in writing on each claim or objections and revise the preliminary electoral rolls in accordance orders and the rolls, as so revised, shall be the final electoral roll. The additions or deletions made while revising the rolls shall be published in the Official Gazette.

**46. I state that the Rule does not contemplate that the Returning Officer has to pass separate order for each**

***claim or objections. The Rule envisages that the each objection so raised has to be examined individually. I state that after receiving the objections I have examined each and every objections personally. Since there was thousands of objections common order dated 7<sup>th</sup> January 2020 and 10<sup>th</sup> January 2020 was passed to include their names in the revised final voter list published on 10<sup>th</sup> January, 2020.***

*(emphasis supplied)*

A perusal at the contents of the affidavit filed by the Returning Officer results in what is *latent* becoming *patent*, as there need not be a further delving into the matter. The Returning Officer deposes that he has considered each and every objection, individually as contemplated under sub-rule (2) of Rule 4 and also states that there were thousands of objections received and a common order passed on 7.01.2020. The defence of the Returning Officer that each objection was

considered individually is not reflected from the order dated 7.01.2020. The order dated 7-01-2020 refers to about 12 documents most of which are orders and interim order passed by this Court in the aforesaid writ petitions which are also extracted hereinabove. The order of the Returning Officer dated **7-01-2020** reads as follows:

“ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಾವುಗಳು ಈಗಾಗಲೇ ಅಂತಿಮ ಮತದಾರರಪಟ್ಟಿಯನ್ನು ತಮ್ಮ ಅಧಿಕೃತ ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ಹಾಗೂ ನೋಟೀಸ್ ಬೋರ್ಡ್‌ನಲ್ಲಿ ಪ್ರಕಟಿಸಿರುವುದು ಸರಿಯಷ್ಟೆ. ಈ ಅಂತಿಮ ಮತದಾರರಪಟ್ಟಿಯನ್ನು ಗಮನಿಸಿರುವ ಕೆ.ಎಂ.ಸಿ ಯ ನಾನ್ - ಟೀಚರ್ಸ್ (ಮೆಡಿಕಲ್ ಪ್ರಾಕ್ಟೀಷನರ್ಸ್) ಮತ್ತು ಟೀಚರ್ಸ್ ಮತದಾರರು, ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದಂತವರನ್ನು ಅಂತಿಮ ಮತದಾರರಪಟ್ಟಿಯಲ್ಲಿ ಸೇರಿಸದೆ ಇರುವ ಬಗ್ಗೆ ತೀವ್ರ ಆಕ್ಷೇಪಣೆಯನ್ನು ವ್ಯಕ್ತಪಡಿಸಿರುತ್ತಾರೆ. ಉಲ್ಲೇಖ - 7ರಲ್ಲಿ ನಾನು ನಿಮಗೆ ಪತ್ರ ಬರೆದು ತಿಳಿಸಿದಂತೆ ಕೆ.ಎಂ.ಸಿ ಚುನಾವಣೆ 2019- 20 ಚುನಾವಣಾ ಸಂಬಂಧ ಮತದಾರರಪಟ್ಟಿಯನ್ನು ನಿಯಮ 4(2)(3)ರಂತೆ ಆಕ್ಷೇಪಣೆಗಾಗಿ ಅಧಿಕೃತ ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ಪ್ರಕಟಿಸಿದ್ದು. ಸದರಿ ಕರಡು ಮತದಾರರಪಟ್ಟಿಯಲ್ಲಿ ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ಮಾಡಿಕೊಳ್ಳದೆ ಇರುವಂತಹ ಸದಸ್ಯರ ಹೆಸರುಗಳು ಆ ಮತದಾರರಪಟ್ಟಿಯಲ್ಲಿ ಇಲ್ಲದೇ ಇರುವ ಬಗ್ಗೆ ಸಾವಿರಾರು ಸದಸ್ಯರು ದೂರನ್ನು ತಮ್ಮ ಅಧಿಕೃತ

ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ದಾಖಲಿಸಿರುವುದು ತಮಗೆ ತಿಳಿದಿದೆ ಹಾಗೂ ಐ.ಎಂ.ಎ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಶಾಖೆಯ ಪದಾಧಿಕಾರಿಗಳು ಮತ್ತು ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸರ್ಕಾರಿ ವೈದ್ಯಾಧಿಕಾರಿಗಳ ಸಂಘ ಕಲ್ಬುರ್ಗಿ ಶಾಖೆ ಇವರು ಲಿಖಿತವಾಗಿ ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದೆ ಬಗ್ಗೆ ದೂರನ್ನು ನನಗೆ ಸಲ್ಲಿಸಿ ಈ ಬಗ್ಗೆ ತಕ್ಷಣವೇ ನ್ಯಾಯ ಸಮ್ಮತ ಕ್ರಮಗಳನ್ನು ಕೈಗೊಂಡು ನಮಗೆ ದಿನಾಂಕ: 23.01.2020 ರಂದು ನಡೆಯುವ ಚುನಾವಣೆಯಲ್ಲಿ ಮತದಾನ ಮಾಡುವ ಹಾಗೂ ಸ್ಪರ್ಧಿಸುವ ಹಕ್ಕನ್ನು ನೀಡಬೇಕೆಂತಲು, ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದವರನ್ನು ಕರಡು ಮತದಾನದ ಪ್ರಕ್ರಿಯೆಯಿಂದ ಕೈಬಿಡುವಂತೆ ಯಾವುದೇ ನಿರ್ಬಂಧಗಳು ಕರ್ನಾಟಕ ಮೆಡಿಕಲ್ ರಿಜಿಸ್ಟ್ರೇಷನ್ ಆಕ್ಟ್ 1961 ನಿಯಮ 1963 ಹಾಗೂ ತಿದ್ದುಪಡಿ ಅಧಿನಿಯಮ 2003, 2017, ತಿದ್ದುಪಡಿ ನಿಯಮ 2019 ರಲ್ಲಿ ಎಲ್ಲಿಯೂ ಕೂಡ ಈ ಬಗ್ಗೆ ನಿರ್ಬಂಧಗಳು ಇಲ್ಲದೇ ಇರುವ ಬಗ್ಗೆ ತಮ್ಮ ಲಿಖಿತ ದೂರಿನಲ್ಲಿ ಪ್ರಸ್ತಾಪಿಸಿ, ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದವರನ್ನು ಮತದಾನದಿಂದ ದೂರವಿಡುವ ಮುನ್ನ ಕೆ.ಎಂ.ಸಿ ಯವರು ನಮಗೆ ಸ್ವಾಭಾವಿಕ ನ್ಯಾಯದ ತತ್ವದಡಿಯಲ್ಲಿ ಯಾವುದೇ ರೀತಿಯ ಅವಕಾಶಗಳನ್ನು ನೀಡದೆ ದುರುದ್ದೇಶದಿಂದ ಸಾವಿರಾರು ಕೆ.ಎಂ.ಸಿ ಸದಸ್ಯರನ್ನು ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗಿಲ್ಲ ಎಂಬ ನೆಪದಲ್ಲಿ ಕೈಬಿಟ್ಟಿರುವ ಬಗ್ಗೆ ತೀವ್ರ ಆಕ್ಷೇಪವನ್ನು ವ್ಯಕ್ತಪಡಿಸಿರುವುದನ್ನು ಗಮನಿಸಲಾಗಿದೆ.

ಅಂತಾಗಿ ಉಲ್ಲೇಖ - 8 ರಲ್ಲಿ ತಮಗೆ ಪತ್ರವೊಂದನ್ನು ಬರೆದು ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದವರನ್ನು ಯಾವ

ಕಾರಣದಿಂದ ಕರಡು ಮತದಾರರಪಟ್ಟಿಯಲ್ಲಿ ಪ್ರಕಟಿಸಿರುವುದಿಲ್ಲವೆಂಬುದಕ್ಕೆ ತಾವು ಉಲ್ಲೇಖ - 12 ದಿನಾಂಕ: 03.01.2020 ರ ಪತ್ರದಲ್ಲಿ ಗೌ|| ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಈ ವಿಷಯವು ಇರುವ ಬಗ್ಗೆ ಪ್ರಸ್ತಾಪ ಮಾಡಿರುತ್ತೀರಿ. ಆದರೆ ಅದರ ಬಗ್ಗೆ ಯಾವುದೇ ವಿವರವನ್ನು ನೀಡಿರುವುದಿಲ್ಲ. ಆದಾಗ್ಯೂ ಈ ಸಂದರ್ಭದಲ್ಲಿ ಈ ಮೂಲಕ ತಮಗೆ ತಿಳಿಯಪಡಿಸುವುದೇನೆಂದರೆ, ಕರ್ನಾಟಕ ಮೆಡಿಕಲ್ ರಿಜಿಸ್ಟ್ರೇಷನ್ ರೂಲ್ಸ್ 1963 ನಿಯಮ 4(2)(3) ರಂತೆ ಹಾಗೂ ನಿಯಮ 5 ಮತ್ತು 6 ರ ಅನುಸಾರ ಮತದಾರರಪಟ್ಟಿಯ ಸಂಬಂಧ ಬಂದಿರುವ ಆಕ್ಷೇಪಣೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ಅಂತಿಮವಾಗಿ ಮತದಾರರಪಟ್ಟಿಯನ್ನು ಪ್ರಕಟಿಸುವ ಜವಾಬ್ದಾರಿಯು ರಿಟರ್ನಿಂಗ್ ಅಧಿಕಾರಿಗೆ ಇರುವುದರಿಂದ ಹಾಗೂ ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದವರನ್ನು ಮತದಾನದ ಹಾಗೂ ಸ್ಪರ್ಧಿಸುವ ಹಕ್ಕಿನಿಂದ ದೂರವಿಡುವುದು ನ್ಯಾಯ ಸಮ್ಮತವಾಗುವುದಿಲ್ಲ. ಅಂದರೆ ಕೆ.ಎಂ.ಸಿ ಕಾಯ್ದೆ ನಿಯಮಗಳಲ್ಲಿ ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ಮಾಡಿಕೊಳ್ಳದೆ ಇರುವವರನ್ನು ಮತದಾನ ಹಾಗೂ ಸ್ಪರ್ಧಿಸುವ ಹಕ್ಕು ಹೊಂದಿರುವುದಿಲ್ಲವೆಂದು ಎಲ್ಲಿಯೂ ತಿಳಿಸಿರುವುದಿಲ್ಲ. ಕೆ.ಎಂ.ಆರ್ ತಿದ್ದುಪಡಿ ನಿಯಮ 2017 ನಿಯಮ 19(2) ರಲ್ಲಿ ಅಂತವರ ಹೆಸರನ್ನು ಕೆ.ಎಂ.ಸಿ ಯ ರಿಜಿಸ್ಟ್ರಾರ್‌ರವರು ಕೆ.ಎಂ.ಸಿ ರಿಜಿಸ್ಟ್ರಾರ್‌ನಿಂದ ತೆಗೆದುಹಾಕಬೇಕೆಂದು ತಿಳಿಸಿರುವ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ತಾವುಗಳು ಅಂತಹ ಕ್ರಮವನ್ನು ತಹಲಾವರೆಗೂ ಕೈಗೊಳ್ಳದೆ ಇರುವುದು ನನ್ನ ಗಮನಕ್ಕೆ ಬಂದುರುತ್ತದೆ ಹಾಗೂ ಮೆಡಿಕಲ್ ಕೌನ್ಸಿಲ್ ಆಫ್ ಇಂಡಿಯಾದ ಇಂಡಿಯನ್ ಮೆಡಿಕಲ್ ರಿಜಿಸ್ಟ್ರಾರ್‌ನಲ್ಲಿ ಎಲ್ಲರ ಹೆಸರುಗಳು ಇರುವುದು ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ನಾನು ಖಚಿತಪಡಿಸಿಕೊಂಡಿರುತ್ತೇನೆ. ಆದ ಕಾರಣ



ನೋಂದಣಿ ನವೀಕರಣ (not renewed) ವಾಗದ ನಾನ್ -  
 ಟೀಚರ್ಸ್ (ಮೆಡಿಕಲ್ ಪ್ರಾಕ್ಟೀಷನರ್ಸ್) ಮತ್ತು ಟೀಚರ್ಸ್  
 ಮತದಾರರಪಟ್ಟಿಯನ್ನು ಅಚಿತಿಮವಾಗಿ ಈ ಪತ್ರ ತಲುಪಿದ ಕೂಡಲೇ  
 ತಮ್ಮ ಅಧಿಕೃತ ವೆಬ್‌ಸೈಟ್‌ನಲ್ಲಿ ಹಾಗೂ ನೋಟೀಸ್ ಬೋರ್ಡ್‌ನಲ್ಲಿ  
 ಪ್ರಕಟಿಸಲು ಈ ಮೂಲಕ ಆದೇಶಿಸಿದೆ. ತಪ್ಪಿದಲ್ಲಿ ಇದರಿಂದ ಆಗುವ  
 ಎಲ್ಲಾ ಹಾಗುಹೋಗುಗಳಿಗೆ ತಾವು ಹೊಣೆಗಾರರಾಗುತ್ತೀರಿ ಎಂದು  
 ತಿಳಿಯಪಡಿಸಿದೆ.”

A reading of the order does not indicate that the Returning Officer has even considered one objection let alone thousands of objections. It is not in dispute that the list so prepared contains many of whom are dead is produced along with the objections to the application seeking vacation of interim order to which as a counter no objections are filed but is orally contended that the Returning Officer was well within his powers to notify the list on his website i.e., **jrcs-bng-ka@nic.in**. This is again contrary to the Act and the Rules. Therefore, the defence in several paragraphs of the affidavit is circumstance enough to hold that action of the Returning Officer was illegal, highhanded and would

resultantly get vitiated by fraud, as one acting contrary to the statute adding number of voters which is neither claimed by the IMA nor indicated in the affidavit as IMA members claimed that 67000 voters names are to be included and the Returning Officer in his affidavit deposes that 24000 and add voters had to be included but what is actually included is a figure that springs from nowhere – 37298 voters, which undisputedly contains names of dead members as voters. Therefore, it should be held that the conduct of the Returning Officer is in perpetration of fraud in the conduct of elections.

31. The statements made in the affidavit of the Returning Officer that 3<sup>rd</sup> respondent/Council did not cooperate with him and therefore he had published the voters list on his website in order to comply with the orders passed by this court is also belied by certain communications of the Council to the Returning Officer

and the Government particularly the communication made on 22-01-2020, which reads as follows:-

*“No.KMC/ELE/RO/Jan/2019 Date:11-01-2020*

*To*

*Sri .Pandurang Garag,  
Returning Officer,  
Karnataka Medical Council,  
Bangalore & Joint Registrar  
of Co-operative Society,  
Bangalore Division,  
Bangalore.*

*Sir,*

*Sub: Clarification of KMC in respect of  
the publication of voters' list  
pertaining to the election  
scheduled to be held on 23-01-  
2020 – reg.*

- Ref:(1) The letter No.AKUKA 44  
RGU 2017 dated  
13.12.2019.*
- (2) Your office letter  
No.Chunavane:KMC: JRCS-  
1:2019-20 dated  
10-01-2020.*
- (3) Your office order  
No.Chunavane:KMC: JRCS-  
1:2019- 20 dated  
10-01-2020.*

*--*

*With reference to the above, I write to state that objections received in this regard are already attended.*

*Further I draw your attention to the provisions of Sections 19 and 26 of the Karnataka Medical Registration Act, 1961 (hereinafter referred in short as "Act") and Rules 43, 44, 45 and 47 and 4 of the K.M.R. Rules, 1963 and Rule 43, 47 and 4 of K.M.R. (Amended) Rules, 2019.*

***Further I will draw your attention to sub-section (1) of Section 26 of Act and I state that the list has been published by this Council in the light of the provisions stated supra.***

*Further I state that the order dated 10-01-2020 in W.P.No.40580 of 2017 referred by you in your letter and order under above references (2) and (3) is not enclosed and the copy of the said order is not made available to us.*

*Further I state that those doctors, who have failed to comply with the mandatory provisions of law in getting their names enrolled/renewed on time as required, do not become eligible to cast their votes in the Elections as they themselves have lost their rights.*

*Further I state that sub-rule 3 of Rule 4 of K.M.R. Rules are to be read along with the provisions of sub-section (1) of Section 26 of Act and hence, sub-rule (3) of Rule 4 of K.M.R. Rules are not supposed to be read independently.*

***Further I state that the steps being taken by you in the light of sub-rule (3) of Rule 4 of K.M.R. Rules is in clear violation of the mandatory provisions of sub-section (1) of Section 26 of the Act for which, the K.M.C. is not answerable.***

*Further I write to state that the Principal Secretary to Medical Education has intimated to K.M.C. under above reference No.(1) to take steps in accordance with the order dated 13-*

*02-2019 passed by the Hon'ble High Court in W.P.No.820 of 2017 and 821 of 2017 and 1584 – 1593 of 2017 c/w W.P.Nos. 65861-862 of 2016, 417-421 of 2017, W.P.Nos. 954-983 of 2017 and W.P.Nos.65832-834 of 2016 (GM-RES). The said order speaks that the petitioners are at liberty to challenge the amended provisions of law with regard to payment of fee for renewal once in five years and the same needs to be considered by you.*

*This is for your kind information.”*

*(emphasis supplied)*

In the communication the Council also referred to the fact of doctors having failed to comply with the mandate of the provisions of law, do not become eligible to cast their votes in terms of Section 26 read with Rule 4 and also quote several orders passed by this Court. As mentioned hereinabove, this Court had directed the 3<sup>rd</sup> respondent/Council to place on record list of voters by way of a pen drive. The same was placed before this

Court on 25-02-2021 in compliance with the order dated 8.01.2021.

32. The pen drive placed before this Court by the third respondent contains death report of 418 doctors and doctors who have not renewed their membership to the tune of 39518 doctors and the list of eligible voters being 61,270. This is again not disputed by either the State or the Returning Officer. It is also not in dispute that few of the names had figured in the list of voters prepared by the Returning Officer does contain names of few persons found in the death report filed by the Council before this Court. Though this Court had clearly tabulated as to what documents that are required from the hands of the Returning Officer on two occasions, they are never furnished by the Returning Officer. The defence of the Returning Officer is whatever affidavit that is filed before this Court (supra) would

cover all clarifications sought by this Court on 8-01-2021.

33. The State and the Returning Officer completely ignore that this Court after considering the affidavit and objections filed further directed on 17-02-2021 again indicating as to what are the documents to be placed before the Court for scrutiny after being dissatisfied with what the State and the Returning Officer had filed. Even on the date of hearing no documents were furnished in compliance with the order passed by this Court. Therefore, this Court is left with no choice but to draw adverse inference upon the 1<sup>st</sup> and 2<sup>nd</sup> respondents for having deliberately not complied with the orders passed by this Court on 8-01-2021 and 17-02-2021. All the circumstances narrated hereinabove would lead to a solitary conclusion that the process of election is vitiated by fraud on the part of the Returning Officer and the resultant elections conducted



on 23.01.2020 would be rendered unsustainable. Therefore, I answer point No.2 in favour of the petitioner and against the respondents by declaring that the entire election process is vitiated by fraud.

**Point No.1:**

*(i) Whether the writ petition suffers from want of maintainability?*

*(a) Estoppel on the part of the petitioner;*

34. I now proceed to consider the first point with regard to maintainability:

It is not in dispute that the subject writ petition was filed long before the elections could commence i.e., on 15.01.2020. Elections were held in terms of the orders passed by this Court on 17.01.2021, 20.01.2021 and the result of the election is directed not to be given effect to by this Court in terms of its order dated 17.02.2021. Therefore, the election is conducted and concluded during the pendency of the proceedings

before the Court. It cannot be said that the petitioner participated in the elections and then has turned around and challenged the election process as it was challenged even before the conduct of elections. Above and apart from all that is stated, it is trite law that there can be no estoppel against a statute. The Apex Court in the case of **A.C.Jose Vs. Sivan Pillai** reported in **(1984)2 SCC 656** at paragraph 38 in a case concerning conduct of elections wherein it considered the very plea of estoppel against the challenge by a candidate after having participated in the elections, the Apex Court holds as follows:

*“38. Lastly, it was argued by the counsel for the respondents that the appellant would be estopped from challenging the mechanical process because he did not oppose the introduction of this process although he was present in the meeting personally or through his agent. **This argument is wholly untenable because***

***when we are considering a constitutional or statutory provision there can be no estoppel against a statute and whether or not the appellant agreed or participated in the meeting which was held before introduction of the voting machines, if such a process is not permissible or authorised by law he cannot be estopped from challenging the same.”***

*(emphasis supplied)*

Therefore, in the light of the facts obtaining in the case at hand the law laid down by the Apex Court, I decline to accept the plea of respondents that the petitioner is estopped from challenging the process of election.

*(b) Elections being over, whether the petitioner has to raise an election dispute under the Rules?*

35. The learned counsel appearing for the respondents-State, impleading applicants and the Returning Officer would in unison submit that once the

election and counting of votes was over, any dispute regarding election should be only in terms of Rule 19 of the Act by filing an appeal before the Appellate Authority and this Court would not have jurisdiction to entertain the writ petition. In view of the vehement submission of all the counsel responding to the *lis* it is germane to notice Rule 19, which reads as follows:

*“19. Disputes regarding election. – (1) An election petition challenging the validity of any election shall be **presented to the Returning Officer** by any candidate at such election within fifteen days from the date of publication of the results under Rule 18 in the Official Gazette. An election petition –*

*(a) shall be accompanied by as many copies as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition;*

*(b) shall contain concise statement of material facts on which the petitioners relies;*

*(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the verification of pleadings.”*

*(2) Any Schedule or Annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.*

*(3) The petitioner shall join as respondent to his petition where the petitioner in addition to claiming a declaration that the election of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where any such further declaration is claimed, the returned candidate.*

(4) The petitioner may claim any of the following declaration---

(a) that the election of the returned candidate is void;

(b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;

(5) **An election petition shall be presented to the Returning Officer in person by the person making the petition or by a person authorized by him in writing in his behalf or sent by Registered post with acknowledgement due. The Returning Officer shall give a written acknowledgement for every petition presented in person.**

(6) **The Returning Officer shall forward the election petition to the Government together with his remarks thereon within a week of its receipt by him."**

*(emphasis supplied)*

A cursory perusal at the Rule which the respondents lay emphasis on would unmistakably indicate that the role of the Returning Officer right from presentation of the petition till its conclusion is indispensable. An election petition challenging the elections is to be presented before the Returning Officer; the Returning Officer should forward it to the Government with his remarks on the election petition so preferred. Therefore, the Returning Officer has a role to play in the presentation and preliminary consideration of an election petition under Rule 19. The entire narration made hereinabove is with regard to the conduct of the Returning Officer and the fraud played by him. Rule 19 directs presenting of an election petition in which allegations of fraud against the Returning Officer are to be made before the very Returning Officer who has the liberty to record remarks and then forward the dispute to the Competent Authority. The Rule with regard to dispute

concerning elections cannot become operational in the peculiar facts of this case as justice must not only be done but seem to have been done. Therefore, I decline to accept the plea of the respondents that an election petition under Rule 19 should be preferred as it would get vitiated by every kind of bias on the part of the Returning Officer as his involvement in terms of the Rule cannot be dispensed with. Therefore, I hold the petition to be maintainable notwithstanding the remedy of raising a dispute available in terms of Rule 19, answering this issue as well against the respondents.

36. It is, without a shadow of a doubt, in terms of the preceding analysis, that the entire election is vitiated on account of the fraud played by the Returning Officer. The Returning Officer who has a duty to act according to the Rules, has not used, but abused his office. Such public servants, if left off the hook, without any penalty being imposed for deliberately acting



blatantly contrary to the statute treating the entire election process as his personal fiefdom, would become an abdication of a duty of this Court. It is also to be noticed that the State and the Returning Officer have made submissions in unison and have defended themselves mutually. Therefore, this Court feels any direction to the State to hold disciplinary proceedings against the Returning Officer would be an exercise in futility. In my considered view, the State should be directed to entrust the conduct of disciplinary proceedings against the Returning Officer to the Lokayukta, who shall conduct an enquiry and submit its report to the State for appropriate action.

37. It is beyond cavil, the action of the Returning Officer, is conceived in fraud and delivered in deceit. The defence that the Returning Officer seeks to put forth contending that he is an innocent officer following the law is only a masquerade to cover up his afore-

narrated fraudulent activity. This Court in exercise of its jurisdiction under Article 226 cannot turn a blind eye to such fraudulent acts, failing which, it would be allowing fraud to trounce upon the stratagem of the spirit and soul of a democratic process - conduct of a fair election. It is , by now , too well settled a principle of law that ***‘fraud unravels everything and obliterates every solemn act’***.

38. For the praefatus reasons, I pass the following:

**ORDER**

- (a) Writ petition is allowed.
- (b) Final voters list published on 10-01-2020 by the Returning Officer is quashed and as a consequence of which, elections conducted on 23-01-2020 and results declared on 25-01-2020 also stand quashed.

- (c) Respondent/State and the Council are directed to work in tandem and conduct re-election to the Council strictly in consonance with the provisions of the Act and the Rules from the stage of preparation of voters list bearing in mind the observations made in this order.
- (d) The aforesaid exercise shall be completed by the State and the Council/respondents 1 and 3 within an outer limit of six months from the date of receipt of a copy of this order, if not earlier.
- (e) The State is directed to entrust the disciplinary proceedings against the 2<sup>nd</sup> respondent - Returning Officer to the Lokayukta who shall conduct proceedings in accordance with law after affording all reasonable opportunity to the 2<sup>nd</sup> respondent

and submit its report to the State and the State shall consider the same and pass appropriate orders in accordance with law.

- (f) The aforesaid action in terms of direction (e) against the 2<sup>nd</sup> respondent shall be concluded within 9 months from the date of receipt of the copy of this order, if not earlier, and report compliance to this Court.

**Sd/-  
JUDGE**

bkp  
CT:MJ