
(1998) 08 DEL CK 0019

In the Delhi High Court

Case No : CW. No. 491/98

C. Bhaskar Rao (Dr.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-08-1998

Acts Referred:

Citation : (1998) 75 DLT 200 : (1999) 48 DRJ 71 : (1998) 2 ILR Delhi 670

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Mr. Vikas Singh, for the Appellant; Mr. Madan Bhatia , Mr. Sandeep Sethi, Mr. Rakesh Tikku, Mr. R.L. Kohli and Mr. S.P. Kalra, for the Respondent

Judgement

Usha Mehra, J.—Petitioner, Dr. C. Bhaskara Rao was elected as Vice President of the Dental Council of India (hereinafter called the Council) in the meeting of the Council held on 15th May, 1996. He has assailed the arrangement of sharing by virtue of which Dr. R.K. Bali, respondent No.3 has been appointed as the President of the Council. His challenge is primarily based on two counts namely; (1) that two persons cannot share the tenure of the office of the President. The tenure of the post of President is for five years. It cannot be divided. (2) Secondly arrangement of sharing of the post of President or rotation of the tenure amongst two persons is against the Consist Act, 1948 (herein after called the Act) and the election regulations. Since the election of November, 1995 has been set aside and even other wise no one got absolute majority in that election held in November, 1995, hence no one could have been appointed to work as President. In the absence of a President it is always the Vice President who officiate, act and perform the duties and responsibilities of a President. In the event of there being a tie i.e. when two persons secured the same number of votes, then the election of that post has to be held afresh. Those persons cannot by mutual private arrangement split the tenure of the President into two parts. In the case of tie no body gets elected. There has to be fresh elections and till such time fresh elections are held, the duties and responsibilities of the post of

President are to be performed by the Vice President which in this case means the petitioner. Thus, according to petitioner, the arrangement of sharing being bad consequently the appointment of Dr. Bali is illegal and void.

2. In order to appreciate the challenge laid by the petitioner, we must grasp few facts relevant for the determination of these questions. The Dental Council of India, a body corporate under the Act, functions through its elected Members. Dr. R.K. Bali was the President of the Council. His term expired in October, 1994. Accordingly, the then Vice President Dr. Shetty assumed charge as Acting President of the Council per the Regulation No. 35. In November, 1995 the General Body of the Council decided to hold election for the post of President, Dr. R.K. Bali, Dr. L.K. Gandhi and Dr. Sridhar Shetty came in the fray for the post of President. Total votes polled were 63, out of which one vote was declared invalid. The out come of that fray was that Dr. Bali and Dr. Shetty secured 22 votes each, where as Dr. Gandhi secured 18 votes. Since there was a tie between Dr. Bali and Dr. Shetty, it became difficult to untangle the knot. The Council, Therefore, decided to refer the matter for opinion to the Central Government, Legal opinion was also received by the Council from its Advocate. However, at the intervention of the Health Minister Dr. Shetty and Dr. Bali arrived at an agreement to share the tenure of the post of President. The agreed proposal to share the tenure of the office of President was submitted to the Central Government. This arrangement of sharing of the tenure of the President was also put to the House. The House unanimously approved the proposal and the arrangement of sharing. On the other hand the under Secretary, Ministry of Health vide letter dated 30th April 1996 conveyed to the Council that proposal submitted by it had been kept on record. This reply of the Central Government was treated by the Council as the decision of the Central Government i.e. approval of the sharing arrangement. The Secretary of the Council accordingly issued a general circular dated 8th May, 1996 informing all concerned that Dr. Shetty would take over as President of the Council and his tenure shall continue till 16th January, 1998, and there after, Dr. Bali would take over as President on 17th January, 1998. Thus in the General Body Meeting of 15th/16th May, 1996 Dr. Shetty was declared President of the Council. Dr. Shetty before being elected as President was holding the post of Vice President. On Dr. Shetty becoming President of the Council, the post of Vice President of the Council, the post of Vice President fell vacant. Accordingly, it was decided in that meeting of 15th May, 1996 to elect a Vice President. Consequently, through secret ballot this petitioner was elected as the Vice President of the Council. Since then the petitioner has been working as Vice President.

3. Dr. Gandhi challenged the election of the President held on 6th November, 1995 by making representation to the Central Government and there after filed a writ petition. In that petition he raised two objections regarding the election held in November, 1995, namely; (1) irregularities committed in the election held on 6th November, 1995 and that arrangement of sharing of the post of President amongst Dr. Shetty and Dr. Bali was not permissible. It is the case of the

petitioner that the first challenge raised by Mr. Gandhi before the Central Government was answered in his favour. The election of 6th November, 1995 has been set aside by the Central Government on the ground of irregularities. As regard Dr. Gandhi's objection with regard to arrangement of sharing, Central Government did not give any decision. Petitioner's case is that in the absence of Central Government's approval of arrangement of sharing, the tenure of the post of President could not be shared by Dr. Shetty and D. Bali between them selves. As the election has already been set aside by the Central Government on the ground of irregularities hence Dr. Bali has no right to hold the post of President. Petitioner further averred that holding of the post of President has been challenged by Dr. Bali by way of a writ petition. This Court granted the stay against the order of the Central Government which is still operating.

4. Petitioner in this writ beside challenging the arrangement of sharing has also challenged the provisions of Section 7(2) of the Act being ultra vires. Before dealing with the points raised by the petitioner, I would like to make it clear that Division Bench while hearing the petition on the question of admission vide order dated 5th February, 1998 held that the challenge to Section 7(2) of the Act was without substance and, Therefore, turned it down. Now, there fore, we are left with the challenge against the arrangement of sharing and the appointment of respondent No.3 Dr. Bali to the post of President.

5. At this stage it would be convenient to refer to some of the relevant provisions of the Act and the Regulations made there under. The relevant provisions of the Act and Regulations for the determination of the points raised are reproduced as under:

SECTION 3 (a), (b), (c), (d):

3. The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely :-

(a) one registered dentist possessing a recognised dental qualification elected by the dentist registered in Part A of each (State) register ;

(b) one member elected from amongst the selves by the members of the Medical Council of India.

(c) not more than four members elected from among them selves, by-

(a) Principals, Deans, Directors and Vice Principals of dental colleges in the States training students for recognised dental qualifications:

Provided that nor more than one member shall be elected from the same dental college;

(b) Heads of dental wrings of medical colleges in the States training students for recognised dental qualifications;

(d) one member from each University established by law in the State which

grants recognise dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the court, from amongst the members of the Dental Faculty of the University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof.

"SECTION 5

Election under this chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Central Government whose decision shall be final"

SECTION 7 (1) & (2)

7 (1) The President and Vice President of the Council shall be elected by the members thereof from among the selves:

Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the functions of the President.

Provided further that for five years from the first constitution of the Council, the President shall, if the Central Government so decides, be a person nominated by the Central Government who shall hold office during the pleasure of the Central Government, and where he is not already a member, shall be a member of the Council in addition to the members referred to in Section 3.

7(2) An elected President or Vice President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as member of the Council, but subject to his being a member of the Council, he shall be eligible for reelection.

SECTION 20

20(1) The Council may, with the approval of the Central Government, [by notification in the Official Gazette] make regulations not inconsistent with the provisions of this Act to carry out the purpose of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may-

- (a) provide for the management of the property of the Council
- (b) prescribe manner in which elections under this Chapter shall be conducted;
- (c) provide for the summoning and holding of meetings of the Council and the Executive Committee, the time and places at which such meetings shall be held, the conduct of business there at and the number of members necessary to constitute a quorum;
- (d) prescribe the functions of the Executive Committee;

- (e) prescribe the powers and duties of the President and Vice President ;
- (f) prescribe the tenure of office and the powers and duties of the Secretary [and other officers and servants of the council, and inspectors and Visitors appointed by the Council] ;
- (g) prescribe the standard curricula for the training of dentists and dental hygienists, and the conditions for admission to courses of such training ;
- (h) prescribe the standards of examinations and other requirements to be satisfied to secure for qualifications recognition under this Act ;
- (i) any other matter which is to be or may be prescribed under this Act:

Provided that regulations under Clauses

(g) and (h) shall be made after consultation with (State) Governments.

(3) To enable the council to be first constituted, the Central Government may make regulations for the conduct of the elections to the Council, and any regulation so made may be altered or rescinded by the Council in exercise of its powers under this section.

(4) Every regulation made under this Section shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and it, before the expiry of the assign immediately following the session or the successive sessions a fore said, both House agree in making any modifications in the regulation or both Houses agree that the Regulation should not be made, the regulation shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

REGULATION NO. 34

"An elected President shall hold office for a period not exceeding five years from the date of election. He shall exercise such powers and perform such duties as are contained in the provisions of the Act, the Regulations and Standing Orders of the Council. He shall do such acts as he considers necessary in the furtherance of the objects for which the Council is established.

REGULATION NO. 35

"Vice President shall hold office for a period not exceeding five years from the date of election. If the office of the President is vacant or if the President for any reason is unable to exercise the powers or perform the duties of his office, the Vice President will act in his place and shall exercise the powers and perform the duties of the President.

6. Reading of Section 20 of the Act makes it clear that the power vests with the

Council to make regulations. Pursuance to the provisions of Section 20 the Council framed Regulations known as Dental Council (Election) Regulation 1952.

7. Mr. Vikas Singh appearing for the petitioner contended that as per the provisions of the Act only the Returning Officer could have declared the results. Returning officer was appointed in this case but till date he has not declared the results. Hence the taking over by Dr. Bali as President pursuance to the election held on 6th November, 1995 is invalid. In the absence of result having been declared by the Returning Officer neither Dr. Shetty nor Dr. Bali could perform the duties of the President. Moreover, there is no provision under the Act or the regulations enabling or permitting two persons to share the tenure of the office of President. The tenure of office of a President is for a maximum period of five years. Use of the expression "an elected president" in Section 7(2) of the Act and Regulation No. 34 clearly show that Legislature had in mind singular President. Thus the tenure of the office of the President could not have been made plural by mutual agreement. Under the Act there is no concept of having two Presidents. The expression an elected President and his term are a clear pointer to the fact that during the period of five years there would be only one elected President. There cannot be two elected Presidents whose term as president would expire with their term as member. The expression "His term" means one elected President whose term as President would co-terminate with his term as member. To arrive at this conclusion reference can be made to Section 7(2) of the Act which points out that there would be only one elected president. Sharing of the tenure of President during the period of five years is neither stipulated nor permissible. If this is permitted it would lead to undesirable consequences.

8. That the power of the Council is subordinate to the plenary power of the Central Government. The Council can exercise its power subject to the approval of the Central Government. In this case the Returning Officer in view of the dispute which arose between Dr. Shetty and Dr. Bali on account of the tie referred the same to the Central Government for its decision. That decision having not been given by the Central Government, the Council of its own could not have permitted the illegal occupation of the post of President by Dr. Bali. This action is in violation of the Act and the Regulation. The Central Government vide its letter dated 30th April 1996 only intimated that it had kept on record the letter of the Council regarding the proposal of arrangement of sharing. This communication of the Central Government by no stretch of imagination would mean approval of the Central Government. Therefore, relying on the decision of the Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, and Gulabrao Keshavrao Patil and Others Vs. State of Gujarat and Others, , Mr. Vikas Singh contended that unless the arrangement of sharing was approved by the Central Government mere intimation of the Central Government that Council's proposal had been kept on record was not enough nor would mean that the proposal had been approved by the Central Government. In the case of Bachhittar Singh (supra) the Apex Court held that Communication of the order to the person concerned is the essence of the order. Secondly in this case as in

Bachhittar Singh's case (supra) order was to be of the Central Government. But none of these conditions stood satisfied in the case in hand. Similarly, in the case of Gulabrao Keshavrao Patil (supra) the Apex Court emphasise that before an order or action could bind, it has to be drawn in the name of the appropriate authority i.e. in that case it was the Governor. Instead of Governor in that case decision was taken by the Minister. The same has held to be invalid. After analysing Article 164 (2) of the Constitution the Apex Court observed that decision of a Minister under the Business Rule is not final or conclusive until the requirements in terms of Clauses(1) & (2) are complied with. Relying on these observations Mr. Vikas Singh contended that the Central Government having not approved the arrangement, mere blessing of the Minister would not amount to be a decision of the Central Government. Even other wise the decision of the Minister was never communicated to the council or to the Returning Officer. The Council of its own could not have approved the arrangement of sharing nor permit the sharing of the office of the President amongst two persons.

9. Mr. Vikas Singh relying on the provisions of Section 5 of the Act contended that when a dispute is referred to the Central Government its decision is final. But in this case the Central Government never gave any decision confirming the arrangement of sharing, Therefore, assumption of office of President by Dr. Bali is not only bad but against the Statute. Further moreover, the Central Government has already set aside the election of the President held on 6th November, 1995. This order was passed on the representation of Dr. Gandhi. Therefore, Dr. Bali on the strength of 6th November, 1995 election which has already been set aside could not have been appointed as the President. The tenure of the office of President being of five years and co-terminus with the expiry of his tenure as member that is why tenure of the President is not a fix tenure. That is why in Section 7(2) the expression used is "a President" meaning there by when the term of a person as member comes to an end he would no longer be the President. In that case he would cease to be the President and for remaining tenure fresh elections have to be held. Since the post of President is co-terminus with his tenure as member it makes sense that there can only be one President for that term whose tenure as President will co-terminate with his term as Member. Dr. Shetty's term as member is to expire in October, 1998. His term as President at best could continue till October, 1998. But by this arrangement he relinquished his post of President in January, 1998. Hence his term as President expired in January, 1998. Thereafter the office of the President fell vacant. It could not have been filled by the illegal appointment of respondent No. 3 on the strength of the alleged arrangement which is bad in law. Neither the Act nor the regulations stipulate that the tenure of the post of Presidents can be split in to parts to enable two members to enjoy the office of the President in their respective term as member. The term of office of the President is with the term of an individual Member and not with office. Therefore, it was necessary to hold fresh elections after Dr. Shetty relinquished the charge as President in January 1998.

10. Mr. R.K. Anand, Senior Advocate appearing for Dr. Gandhi while supporting the case of the petitioner contended that if this arrangement is given the seal of approval, it would adversely effect the right of the new electorate. Electorate who join subsequently cannot aspire to contest election after the term of Dr. Shetty came to an end or on the date Dr. Shetty relinquished the post of President. By allowing Dr. Bali to act as President pursuant to the arrangement of sharing, the object of the Act and in particular of Section 7(2) has been frustrated. Those Members who joined subsequently their rights stood effected. Relying on Section 7(2) Mr. Anand contended that the term of President is not a fixed tenure of five year. It is co-terminus with his term as Member. A person who is elected President for five years may not be President for five years because of his term as Member coming to an end earlier, he will have to relinquish the office of the President the day he ceases to be a member. Dr. Shetty's term as member would come to an end in October, 1998 Therefore, the electorate hoped that they would get opportunity to contest the election of the President in January, 1988 when Dr. Shetty vacated the office of the President. But by this arrangement their hopes and right stood adversely effected.

11. According to Mr. Vikas Singh even though the petitioner did not challenge the arrangement of sharing either in the meeting of 15th/16th May, 1996 or till January, 1998 but this would not act as an estoppel against him. There is no estoppel against the Statute Since the Act does not envisage arrangement of sharing to the office of President, hence the principles of estoppel would not apply in this case. To support his contention he placed reliance on the decision of the Supreme Court in the case of Shabi Construction Company Vs. City and Industrial Development Corporation and Another, , I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, and Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, . Moreover Dr. Gandhi has already challenged the election on the ground of irregularity and sharing of arrangement. The government of India in its counter affidavit filed in Dr. Gandhi's petition admitted that under the Act there was no provision of sharing of office of the President by two incumbents in the event of a tie. In view of this admission of the Central Government that there is no provision of sharing nor the Competent Authority communicated its approval or sanction for this arrangement. Therefore, the occupation of the office of President by Dr. Bali is bad. When confronted why the writ petition was not filed when Dr. Shetty took over as the President, Mr. Vikas Singh explained that Dr. Shetty had colour of office. Dr. Shetty held the office of Vice President, Therefore, could be called office holder having colorable authority or some colour of title to the post of President. He being the duly elected Vice President on the falling of the post of President, he being Vice President as per Regulation No.35 was the only competent person to act as President. Dr. Shetty having a colour of the office, he being Vice President was competent to perform the duties of the President. It was only when Dr. Bali took over as President that the cause of action accrued to the petitioner. Thus according to him there was no delay in

filing this writ petition. Moreover, the Returning Officer having not declared the result, Therefore, holding of office by appellant is bad in law. The decision on 15th May, 1996 was taken by declaring Dr. Shetty as the President. There was neither prior approval of the Central Government nor the result was declared by the Returning Officer. Even the decision declaring Dr. Shetty as the President was taken prior to the meeting of General Body, to which petitioner was not a party. Dr. Bali has in fact no locus standi nor any right to act as President nor by mutual agreement he could be conferred the right to act as President of the Council. This action is against the provisions of the Act and the Regulations. Dr. Shetty, of course, could have acted as President as per Regulation 35 because he was the then Vice President of the Council. Such a right does not exist in favor of Dr. Bali.

12. Countering these arguments Mr. Madan, Bhatia, Senior Advocate appearing for Dr. Bali, respondent No. 3 contended that this petition is not maintainable and suffers from legal infirmities, namely, an abuse of the process of the Court, there is suppression of material facts, the petition suffers from delay and laches. Finally, the petitioner having taken advantage of this arrangement of sharing he is estopped from challenging the same. He was party to the unanimous decision of the Council there by approving the arrangement, hence he cannot be allowed to approbate and reprobate.

13. Taking the first ground i.e. abuse of the process of the Court, Mr. Madan Bhatia contended that the petitioners had filed an application bearing CM. No. 1029/97 in Civil Writ Petition No. 4855/97. In CM. No. 1029/97 he claimed these very reliefs and prayed for the vacation of the stay granted against Central Government's order declaring the election of 6th November, 1995 as invalid. Since the petitioner failed to get a favourable order in him CM No. 1029/97, hence he has filed this petition during the pendency of his CM. No. 1029/97. This according to Mr. Madan Bhatia, is nothing but an abuse of the process of the Court not only petitioner committed abuse of the process of the Court but in fact concealed and suppressed the material facts, for example, the decision of the General Body Meeting of the Council held on 15th/16th May, 1996. In the said Meeting the General Body unanimously resolved that the post of President should be shared amongst Dr. Shetty and Dr. Bali and approved the arrangement of sharing. To this Resolution the petitioner was a party. Bear reading of the proceedings of the Council of that date show that Council understood the letter of the Central Government to be its approval of the arrangement of sharing. It is in that meeting of 15th/16th May, 1996 that the General Body resolved and declared Dr. Shetty to be the President Consequently the post of Vice President fell vacant. It was ordered to be filled up in the meeting by holding secret ballot. This petitioner offered for the post of Vice President and was elected so. Even otherwise there existed approval of the Central Government of this arrangement of sharing because the Minister the Competent Authority on behalf of the Central Government approved the arrangement. This can be verified from the Government file. It is only thereafter that the letter of 30th April, 1996 was issued.

14. Taking up the ground of delay and latches, Mr. Madan Bhatia contended that the arrangement for sharing was implemented in May, 1996. Dr. Shetty pursuant to that arrangement of sharing was declared President. He started functioning and performing the responsibilities and duties of President w.e.f. May, 1996 itself. The present writ petition was filed in February, 1998 i.e. almost after two years. No reasons assigned for this delay. Moreover the petitioner has not challenged the appointment of Dr. Shetty which was also pursuant to that arrangement. The first half of sharing came to an end on 16th January, 1998. If the petitioner was aggrieved by that arrangement he ought to have challenged the same in May, 1996 or immediately thereafter. But he waited to allow Dr. Shetty to complete his tenure as per the arrangement. This silence on his part is a clear pointer to his having waived his right and acquiescence. From his conduct it is clear he accepted the arrangement of sharing. Sharing of tenure of President between Dr. Shetty and Dr. Bali was an integral part of the arrangement. The tenure of one from that of the other cannot be segregated nor can be treated separately. If the arrangement of sharing could be valid qua Dr. Shetty, it cannot be invalid qua Dr. Bali. Had the petitioner challenged the arrangement of sharing in May, 1996 i.e. on the day Dr. Shetty was declared President and the election on that ground had been set aside, then the petitioner could not have been appointed as Vice President. Dr. Shetty would have continued as Vice President. In that event this petitioner on the strength of Regulation 35 could not have claimed as of right the post of President. He with ulterior motive kept sitting on the fence so long Dr. Shetty remained President. It was only due to the arrangement of sharing that the post of Vice President fell vacant and this petitioner occupied the same. Having taken advantage of the post of Vice President it is not fair for him to contend that the unanimous resolution of the Council approving the arrangement of sharing is bad in law. Nor can he be permitted to argue that Dr. Shetty had colorable authority to occupy the post of President because he was the then Vice President of the Council.

15. Taking up the preliminary objection that the petitioner has committed abuse of the process of the Court, it cannot be denied that the petitioner filed an application under Article 226 (3) of the Constitution of India in CW No. 4855/97 seeking these very reliefs. That application is still pending. For the same relief the present writ petition has been filed. The petitioner having availed the remedy under Article 226(3) of the Constitution of India and that application having been pending strictly speaking it would amount to an abuse of the process of the Court, though on this ground alone I am not basing my finding.

16. As regards the contention of Mr. Madan Bhatia, Senior Advocate that the petitioner suppressed certain important facts, I find no force in this submission, petitioner admittedly did not mention that the letter dated 30th April 1996 of the Central Government was placed before the General Body, or that Dr. Shetty was unanimously elected as President in the said meeting. On Dr. Shetty becoming President the post of Vice President fell vacant to which in that very meeting the petitioner was elected as Vice President. It has also not been mentioned that the

petitioner was party to the resolution and to the arrangement of sharing. That the arrangement was approved by the House. He offered himself for the post of Vice President. Though these facts have not been mentioned in the petition in detail but in substance have been mentioned either in the petition or in the documents annexed with the petition. Hence it cannot be said that there has been suppression of material facts. It was not necessary for the petitioner to plead evidence in his petition. According to petitioner no formal sanction of the Central Government was received. Whereas according to Mr. Madan Bhatia letter dated 30th April, 1996 was treated by the House as sanction. There can be difference of perception in the appreciation of these facts. For these reasons, I do not find any substance in the contention of Mr. Madan Bhatia that petitioner suppressed material facts from the Court.

17. The other legal objection raised by Mr. Madan Bhatia pertains to petitioner's deliberately filing incomplete minutes of the meeting of the Council held on 15th/16th May 1996. This Mr. Madan Bhatia says the petitioner did in order to mislead this court. Mr. Vikas Singh has explained the circumstances under which incomplete minutes were filed. There was no intentional omission. The correct copy has already been placed on record. In view of the Explanation given by Mr. Vikas Singh, no mala fide on this count can be attributed to the petitioner.

18. So far as the delay in presenting this petition is concerned, I find substance in the argument of Mr. Madan Bhatia. This petition besides suffering from delay and laches is also liable to be dismissed on the principle of stoppel. The petitioner did not challenge the appointment of Dr. Shetty when he was declared president of the Council on 15th May, 1996. Dr. Shetty took charge as President not on account of being Vice President as per Regulation No. 35 but on account of the arrangement of sharing duly approved by the House. This petitioner cannot be allowed to approbate and reprobate in the same breath. He cannot be allowed to accept part of the arrangement i.e. appointment of Dr. Shetty and challenge the other part of the same by virtue of which Dr. Bali took over as President in January 1998. If this arrangement is bad qua Dr. Bali, it could not, have been valid qua Dr. Shetty. The challenge to this arrangement of sharing after almost two years of its implementation could not be but four mala fide reasons. The arrangement of sharing was unanimously approved by the House on 15th/16th May, 1996. It was only when this arrangement was implemented thereby appointing Dr. Shetty as, President that the post of Vice President fell vacant to which the petitioner got elected. If we go through the grounds taken in this petition and in particular grounds (b) (c) (f) (g) (h) (i) (m) and (n), it shows that the challenge in this petition is only to the arrangement of sharing and not to the appointment of Dr. Shetty as President. Having accepted the appointment of Dr. Shetty as President due to that arrangement, it does not lie in the mouth of the petitioner now to challenge that arrangement particularly after having taken advantage of this arrangement. The principles of estoppel and acquiescence have come to play. Decision of the Apex Court in the case of Maharashtra State Road Transport Corporation Vs. Balwant Regular Motor

Service, Amravati and Others, has a great bearing on the facts of this case. In Amravati's case (supra) RTA passed an order on 10/11 September 1995 fixing the date of the commencement of the service. A compromise was reached by the parties during the operation of the said order. By virtue of that compromise the long protracted litigation came to an end. By virtue of that compromise time was allowed to the private operators to wind up their business. Subsequently the private operators challenged the said compromise order. Rejecting their objection, the Apex Court observed that the private operator including the respondent were present through duly appointed counsel when the order of 10th/11th September, 1995 was passed. They had accepted that compromise and acted upon it, derived benefits and advantages there from. It was further observed that "but for that order of the RTA which suspended the operation of the permit of the appellant, the private operators including the respondent could not have got temporary permits to operate on the same routes". Therefore the Apex Court held that they acquiesced to the RTA's order hence disentitled to the relief claimed in the writ petition. It further observed that the writ of certiorari will not be granted in a case where there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. These observations of the Apex Court were based on the principle stated by Sir Barnes Peacock in *Lindsay Petroleum Co. Vs. Prosper Armstrong Hurd, Abram Farewell and John Kemp*, (1874) 5 PC 221, which is reproduced as under :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay, are most material. But in every case, if an arrangement against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation's the validity of that defense must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the intervals, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

19. This principle, to my mind, squarely applies to the facts of this case. There has been considerable delay on the part of the petitioner in asserting his right, if any. It could not have been but deliberate because so long as Dr. Shetty remained President pursuant to the arrangement of sharing, this petitioner never challenged the same. He knew that if he challenges the arrangement and elections are ordered to be held afresh, Dr. Shetty would revert back as Vice President. The petitioner in that eventuality would lose the post of Vice President. Therefore, he did not challenge the appointment of Dr. Shetty and took

advantage of the arrangement of sharing. Now he cannot turn around and say that the arrangement to which he was party is bad. His challenge now would effect adversely the respondent No. 3. Had he challenged the arrangement of sharing in May, 1996 and succeeded here would have been fresh elections. The clock cannot be turned back. Respondent No. 3 cannot be put back to the same position as he would have been had the petitioner challenged the arrangement in May, 1996. Dr. Shetty has already availed the benefit of this arrangement and worked as President till 18th January, 1998. Dr. Bali in his wildest dream could not have imagined or visualized that when his turn would come, this petitioner who took advantage of that arrangement by becoming Vice President would challenge that very arrangement after two years or drag him in litigation. From the facts which have come on record it can safely be concluded that the petitioner not only accepted the arrangement of sharing but took advantage and benefit of the same by becoming Vice President. If the arrangement is bad then there was no vacant post of the Vice President. In that case his election as Vice President cannot be valid. Lord Denning, referring to what Lord Cairns said in *Central London Property Trust Ltd. Vs. High Trees House Ltd.* (1956) 1 All ER 256 observed:

"It is the first principle upon which all courts of equity proceed ... that it will prevent a person from insisting on his strict legal rights - whether arising under a contract or on his title deeds, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties."

20. Petitioner not only did not challenge the arrangement but as already pointed out took benefit of that arrangement. He along with others present in the House unanimously approved the arrangement. In this view of the matter, to my mind this petitioner has no locus standi to challenge the appointment of Dr. Bali nor can invoke Regulation No. 35 in support of his right. From 15th May, 1996 till January, 1998 this petitioner took full advantage of the arrangement. He, Therefore, is estopped from challenging the validity of the same being beneficiary of the said arrangement.

21. Contention of the petitioner that prior approval of Central Government was required, to my mind, this argument has no force.

22. General Body did make a reference to the Central Government for seeking solution to the problem posed by this tie. This seeking of solution does not amount to seeking a decision as envisaged u/s 5 of the Act. In fact Section 5 of the Act deals with the elections relating to the categories mentioned in Section 3 (a), (b), (c) and (d). The mode for the conduct of election of the categories as mentioned in Section 3 has been prescribed in the Regulations. Therefore, the mode or procedure prescribed for the categories mentioned in Section 3 would not mutate mutants apply to the category of elections mentioned in Section 7 of the Act. It is in regard to elections envisaged u/s 3 of that Act that expression "Returning Officer" has been used, Section 5 since comes after Section 3,

Therefore, it is presumed that election talked about in Section 5 obviously relate to Section 3 and not to the election of President and Vice President as provided u/s 7 of the Act. Reading of Regulation 2(f) which defines "Returning Officer" shows that Legislature had in mind the election of the categories as mentioned in Section 3 (a), (b), (c) and (d) of the Act. No mode or procedure has been prescribed as to how the election for the post of President or Vice President are to be conducted. It has in fact been left to the members of the House or the Council to elect their President or the Vice President either by voice vote, by show of hands or by secret ballot. In the absence of any procedure or mode prescribed there is no question of seeking decision of the Central Government. Letter was written to the Central Government in order to seek its opinion only. The opinion was expressed by the Minister and covered by the Government vide letter dated 30th April, 1996. Hence there is no violation of any provisions of the Act or the Regulation.

23. The Central Government through its standing counsel Mr. Rakesh Tikku, took the stand that sanction was accorded for this arrangement of sharing. The Minister gave his approval by recording so on the file. After the Minister approved this arrangement. It was conveyed vide letter dated 30th April, 1996 intimating that council's letter was kept on record. Mr Madan Bhatia rightly contended that this letter of 30th April, 1996 has to be interpreted to mean that the arrangement of sharing was approved by the Central Government. Mr. R. Kohli, counsel for the Council stated that reason for accepting the letter of Central Government dated 30th April 1996 as sanction had a back ground. This was issued after the House unanimously adopted and approved the arrangement of sharing and the Minister after discussion with Dr. Shetty and Dr. Bali suggested the arrangement of sharing. It was in fact at the intervention of the Minister that arrangement of sharing was arrived at. This fact that Minister approved the arrangement was got confirmed by this Court when original file of the Ministry was called. The perusal of the file of the Central Government showed that Minister accorded the sanction to this arrangement and only there after the letter of 30th April, 1996 was issued. After receipt of this letter dated 30th April, 1996 that in the meeting of 15th/16th May, 1996 Dr. Shetty was declared President till 18th January, 1998 and the after Dr. Bali was to take over as President of the Council. The petitioner never challenged nor contested the appointment of Dr. Shetty as President. The arrangement of sharing was acceptable to him because he wanted to get elected against the post to be vacated by Dr. Shetty. Had Dr. Shetty been appointed to perform the duties of President as per Regulation No. 35 there would have been no vacant post of President, hence no question of any election for the post of Vice President. Petitioner was aware of this position that is why he did not challenge the appointment of Dr. Shetty or for that matter arrangement of sharing.

24. Dr. Bali's position stood altered when the Member of the Council including the petitioner unanimously approved the arrangement and did not ask for fresh elections. The conduct of the petitioner is such if his prayer is accepted it will

cause irreparable loss to Dr. Bali, respondent No.3 Dr. Bali now cannot be put back to the position of May, 1996. The case of the petitioner is identical to that of Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Ors. 1986 (1) SLR 699. In that case Om Prakash appeared in the competitive test without prejudice. He filed the writ petition only after he realised that he would not be successful in the examination. High Court accepted his prayer but the Apex Court while reversing the judgment of the High Court observed that having appeared in the examination and taken chance in appearing in the examination, he cannot be allowed to challenge that examination. He was estopped from doing so. Similarly in the present case having accepted the arrangement of sharing and taken advantage of that arrangement by becoming Vice President, the petitioner cannot be allowed say that arrangement is illegal or bad in law. As per his own showing, he was validly elected as Vice President. Facts remain he occupied the post of Vice President pursuant to Dr. Shetty becoming President due to the arrangement of sharing. If petitioner's election as Vice President is valid then arrangement of sharing cannot be invalid. Dr. Shetty was elected as Vice President in February, 1992. Had he not been elected as President he would have continued as Vice President till October, 1998. Then in that case the petitioner had no chance of becoming Vice President. He would have continued as a Member thus having no right to stake claim over the post of President. If the arrangement was bad, it was bad in May, 1996 and arrangement having been implemented, its fruits are being enjoyed by petitioner, Therefore, cannot now be allowed to challenge the same in February, 1998.

25. Reliance by the petitioner on the decisions of the Apex Court namely, Bachhittar Singh (supra) and of Gulabrao Keshavrao Patil (supra) are of no help to him. The facts in those cases are totally different. In the case in hand no mode has been prescribed by the Act or the Regulation to show how election of the President has to be conducted. It is only when the mode is prescribed and there is deviation or breach from the same that dispute deemed to have arisen which has to be referred to the Central Government. Since in this case there is no mode or procedure prescribed as to how election of the President has to be conducted hence there was no necessity to seek prior sanction of the Central Government.

26. Mr. R.L. Kohli counsel for the Dental Council drew my attention to the expression in Section 6 (5) and Section 6 (1) of the Act and contended that a member whose term might have finished shall continue to be a member until his successor is elected or nominated and the member of the council whose term has finished or who may be stated to have vacated it eligible for reelection or re-nomination. It is in this context that a member who is President or Vice President or whose term has otherwise finished is entitled to seek re-election and continue to his full term of five years. The conjunctions of terms is, Therefore, made permissible. In this regard reference was also made to Section 9 and 20 of the Act. No where in the Regulation or in the Act the Central Government has been given power to make regulation per se or act in a manner as superior body not

enjoy plenary powers to conduct the business of the Council nor the Central Government has been conferred adjudicatory power regarding the functioning of the Council. The only provision giving power to the Central Government are noted u/s 54 of the Act which is in the nature of seeking remedial means from a Commission and the other u/s 19 to seek information from the Council in the nature of minutes of the Executive Committee, Annual Report and abstract of accounts etc. In the absence of any procedure or mode prescribed for the election of President, the provisions of appointing the Returning Officer or of seeking Central Government's opinion was neither mandatory nor statutory.

27. Having taken advantage of the benefit of getting himself appointed as the Vice President in the vacancy caused by Dr. Shetty, the petitioner now cannot turn around and say that he has a locus standi to be appointed as President by virtue of Regulation No. 35 and that the appointment of Dr. Bali as President is bad. If arrangement is bad then appointment of Dr. Shetty and Dr. Bali are bad and consequently petitioner's appointment as Vice President is bad because in that case Dr. Shetty would hold the post of Vice President till October, 1998. Petitioner in that case has no locus standi to invoke Regulation 35 or seek any relief on that basis. Reliance in this regard can be placed on the observations of this Court in the case of Umrao Singh Vs. Man Singh and Others, which are reproduced as under ;

"A person cannot be allowed to reprobate and approbate particularly when he has already taken advantage of the position. The principle that a person may not approbate and reprobate expresses two propositions, first, that the person in question having a choice between courses of conduct, is to be treated as having made an election from which he cannot resile, and, second, that he will not be regarded, in general at any rate as having to elected unless he has taken a benefit under or arising of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent."

28. These observations were approved by their Lordships of the Supreme Court in the case of Nagubai Ammal and Others Vs. B. Shama Rao and Others, .

29. The petitioner had the first choice to question the arrangement of sharing. Having not done so and rather participating in the same and having been member of the unanimous Resolution he cannot be allowed to resile from the same because he has taken benefit arising out of the course of conduct which he first perused and which if now allowed the appointment will be inconsistent with his conduct. Because of this principle, he cannot be allowed to urge that said arrangement is bad. This principle is based on the Halsbury's Laws of England, Fourth Edition, Volume 16, page 844 paras 957 958 which define what is "approbation and reprobation". It reads:

957. Approbation and reprobation - On the principal that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais. The principle that

a person may not approbate and reprobate expresses two propositions :

1. That the person in question, having a choice between two courses of conduct, is to be treated as having made an election from which he cannot be re-choose ;
2. That he will not be regarded, in general at any rate, as having so elected unless, he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent.

That a plaintiff, having two inconsistent claims, who elects to abandon one and pursue the other may not, in general, afterwards choose to return to the former claim and sue on it; but this rule of election does not apply where two claims are not inconsistent and circumstances do not show an intention to abandon one of them.

Common law principle which puts a person to his election between alternative inconsistent courses of conduct has no connection with the equitable doctrine of election and relates mainly, though not exclusively to alternative remedies in a court of justice.

958. Examples of the common law principle of election - After taking an advantage under an order a party may be precluded from saying that it is invalid and asking to set it aside, or from setting up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded. He may not be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it; nor will a judgment creditor who, after succeeding in interpleader proceedings, takes out of court money paid into court as representing the value of the goods to abide the event.

30. From the reading of the above paras, it gets clear that petitioner is precluded from saying that arrangement of sharing is invalid as he took advantage of this arrangement of sharing by getting himself elected as Vice President and then keeping it quite till Dr. Shetty remained President.

31. The contention of Mr. Vikas Singh Dr. Shetty had "colorable authority" or some colour of title to the post of President. This argument has no force. If Dr. Shetty had acted as the President on basis of Regulation 35, this argument could have some substance. But that is not the case in hand. Dr. Shetty did not take up the position of President on the de-facto principle or colorable authority of being the Vice President. He was declared to be President on the basis of election held on 6th November, 1995. This arrangement of sharing was evolved at the intervention of the Central Government through its Minister who had the authority to accord sanction on behalf of the Central Government. He is estopped from challenging the same. Regarding estoppel it is said that though it may cause injustice if misapplied, in rightly applied it is founded upon reason and justice, and is a principle of good morals as well as of law and that it often enables right and justice to triumph where nothing else known to jurisprudence can do so. It is a means of repose. It promotes fair dealing. Its operation, secure

those ends. Like the State of Limitation, it is a conservator, and without it society could not well go on. It was so said by Swayne, J. in the case of Daniels Vs. Tearney, (1880) 102 U.S. 415, 26 L.ed. 187. In the case of Charles Rickards Ltd. Vs. Openheim (1950) 1 K.B. 616 Denning L.J. said:

"Whether it be called waive or for bearance on his part or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct be evinced an intention to affect their legal relations. He made, in effect, a promise not to insist on his strict legal rights. That promise was intended to be acted on, and was in fact acted on. He cannot afterwards go back on it."

Waiver proceeds on the basis that a man not under legal disability is the best judge of his own interest and if with knowledge of a right or privilege conferred on him by Statute, contract or otherwise for his benefit, he intentionally gives up the right or privilege, or chooses not to do so.

32. In the present case, the petitioner had a right to challenge the arrangement of sharing. He was not under any obligation to accept the arrangement. But he did not challenge nor protested rather accepted the same by contesting the election of Vice president consequent on Dr. Shetty vacating the post of Vice President. Therefore at this stage, he cannot now contend that though his election is valid as Vice President but the election of Dr. Shetty and Dr. Bali as President is bad in law. In fact the principle of waiver and estoppel squarely apply in the facts of this case.

33. That there is no quarrel with the proposition stated by Mr. Vikas Singh that the estoppel cannot legitimately give authority and powers which does not in law possess. In other words, no estoppel can legitimate action which is ultra vires. Admittedly no waiver of right no consent or private bargain can give an authority or power nor can legitimate its action if it is illegal or bad in law. But as already pointed above, since no mode or procedure has been prescribed either under the Act or the Regulation for the election of the President or Vice President, Therefore, no question of referring the matter to Central Government for its decision nor the Council was under any obligation to await the declaration by the Returning Officer. Even otherwise, in this case there was no dispute. The tangle was the tie between Dr. Shetty and Dr. Bali hence in the absence of any procedure prescribed as to how this problem could be solved the Council solicited the opinion of the Central Government. But seeking of this opinion by no stretch of imagination would mean that Council referred this matter as a dispute to be settled by the Central Government. Since the Council only sought opinion as to how to solve the tangle arisen because of the tie that does not mean that the decision of the Central Government was binding. Moreover, Central Government through its counsel Mr. Rakesh Tikku fairly conceded before this Court that the Central Government accepted the arrangement so sharing by keeping the letter of the Council on record and conveyed the same vide its letter dated 30th April, 1996 intimating that arrangement of sharing has been kept on record. The Central Government means the Ministry concerned and in this case the Ministry

of Health. The Minister of Health accorded approval to the arrangement of sharing. This fact was ascertained from the original file produced by Mr. Rakesh Tikku. Thus the arrangement had the blessing of the Central Government. The election has not been set aside on account of this arrangement of sharing but on account of the alleged irregularities. Therefore, so far as the arrangement of sharing is concerned, it had the necessary sanction of all the concerned authorities. This is how the Council understood. This was known to the petitioner who was present in the House which met on 15th/16th May, 1996 and unanimously approved the arrangement of sharing. He having taken advantage now cannot be allowed to challenge the same nor can be allowed to say that right vest in him pursuant to Regulation 35 to act as President instead of respondent No.3. From his conduct and the facts which have come on record, it is clear that the arrangement of sharing arrived at between Dr. Shetty and Dr. Bali was approved by the house unanimously and in the absence of any Regulations prescribing the procedure for the elections of President this arrangement of sharing mutually arrived with the blessing of the Central Government cannot be but valid, binding and legal.

34. For the reasons stated above, I find no merits in the petition. Dismissed.