
(1994) 01 DEL CK 0027

In the Delhi High Court

Case No : Civil Writ Petition No. 818 of 1990

Dr. Anil Kohli

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Citation : (1994) 1 AD 450 : AIR 1994 Delhi 279 : (1994) 53 DLT 702 : (1994) 28 DRJ 373 : (1994) 2 ILR Delhi 195

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. P.C. Khanna and Ms. Ruchi Sindhwani, for the Appellant; Mr. V.K. Shali, for the Respondent

Judgement

D. P. Wadhwa, J.—The petitioner, a dental Surgeon holding a Master degree in Dentistry from Lucknow University, has filed this petition under Art. 226 of the Constitution challenging the Notification No. V.120B/5/88-PMS date 9 January, 1990 issued by the Government of India, Ministry of Health and Family Welfare (Department of Health), by which the petitioner stood removed from the membership of the Dental Council of India constituted under the Dentists Act, 1948 (the Act for short). The petitioner had earlier been nominated to the Council by Notification No. V.12013/5/88-PMS dated October, 1989. The petitioner also seeks a declaration that he continues to be the member of the Council till expiry of his term in pursuance of Notification dated 24 October, 1989 which expires on 15 October, 1994. To understand the implications it would be appropriate to reproduce both the notifications:--

No. V. 12013/5/88-PMS

Government of India

Ministry of Health and Family Welfare

(Deptt. of Health)

Nirman Bhavan,

New Delhi, the 24th October, 1989.

NOTIFICATION

S.O. ----- Whereas in pursuance of clause (f) of Section 3 of the Dentists Act, 1948 (16 of 1948), the following persons have been nominated by the Central Government to be members of the Dental Council of India with effect from the date shown against each, namely:--

1. Dr. Fali S. Mehta. LDSc., DMD (USA), The Sea Side, 147, Middle Colaba, Women Graduates Union Road, Bombay-400005. 16-10-1989
2. Dr. R. K. Bali, BDS. E-13, East of Kailash, New Delhi-110065. 16-10-1989
3. Dr. Anil K. Kohli, M DS, E.601 , Greater Kailash-II, New Delhi- 110048. 16-10-1989
4. Dr. H. R. Prem Sachdeva, I,. Gela Ram Memorial of Dental Hospital, 58/2, Ashok Nagar, New Delhi-110018. 16-10-1989
5. Dr. G. R. Bhat, 17, Purasawalkam High Road, Madras-600007. 16-10-1989

Now, Therefore, in pursuance of clause (f) of Section 3 read with sub-section (1) of Section 6 of the said Act, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Health and Family Welfare (Department of Health, No. S.O. 430, dated the 24th January, 1984, namely:--

In the said notification under the heading "Nominated under clause (f) of Section 3", for Serial numbers 2 to 6 and the entries relating thereto, the following shall be substituted, namely:--

1 2 3 4 5

"2. Dr. R. K. Bali, BDS, E. 13, East of Kailash, New Delhi-110065. Nominated Central Government 16-10-1989

3. Dr. Anil K. Kohli, MDS, E.60I, Greater Kailash-11, New Delhi-110048. Nominated Central 16-10-1989

4. Dr. Fali S. Mehta, LDSc, DMD (USA), The Sea Side, 147, Middle Colaba, Women Graduates" Union Road, Bomba-400005. Nominated Central 16-10-1989

5. Dr. H. R. Prem Sachdeva, Lala Gda Ram Memorial Denial Hospital, 58/2, Ashok Nagar, New Delhi-110018. Nominated Central Government 16-10-1989

6. Dr. G. R. Bhat, 17, Purasawalkam High Road, Madras-600007. Nominated Central Government 16-10-1989

Sd/-

(R. SRINIVASAN)

(UNDER SECRETARY TO THE GOVT. OF INDIA"

"No-V. 12013/5/88-PMS

Government of India

Ministry of Health and Family Welfare

(Deptt. of Health)

Nirman Bhawan,

New Delhi, the 9th January, 1990.

NOTIFICATION

S.O. Whereas in pursuance of Section 3 of the Dentists Act,, 1948 (16 of 1948), the Central Government is pleased to nominate certain members to the Dental Council of India:

Now, Therefore, in pursuance of clause (f) of Section 3 read with proviso to sub-section (I) of Section 6 of the said Act, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Health and Family Welfare (Department of Health) No. S.O. 430, dated the 24th January, 1984, namely:--

In the said notification, under the heading "Nominated under clause (f) of Section 3", for Serial numbers 1, 3 and 4 and the entries relating thereto, the following Serial numbers and entries shall be substituted, namely:--

1. 2. 3. 4. 5.

"1. Dr. L. K. Gandhi, C-56, NDSE II, New Delhi-110049. Nominated Central Government 30-12-1989

3. Dr. Srikant Prusti, (Retired Professor of Dentistry, S.C.B. Medical College, Cuttack, Konika Chowk, Cuttack, Orissa. Nominated Central Government 30-12-1989

4. Dr. Kamala Prasad Singh, Darbhanga Medical College and Hospital, Darbhanga (Bihar). Nominated Central 30-12-1989

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Sd/-

(R. SRINIVASAN)

UNDER SECRETARY TO THE GOVT. OF INDIA

2. When the petition was filed there were only two respondents being Union of

India and the Dental Council of India. By a subsequent amendment in the writ petition three more respondents, namely, Dr. L.K. Gandhi, Dr. Srikant Prusti, and Dr. Kamala Prasad Singh, were added as respondents. This was because of the notification appointing them to the Council.

3. The Act was passed to regulate the profession of dentistry in the country. "The Council" means the Dental Council of India constituted u/s 3 of the Act. The Council has to perform various functions which are connected with the education and practice in dentistry. Section 3, in so far as it is relevant, is as under:--

"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 dentists registered in Part A of each state register;

(b) one member elected from amongst themselves by the members of the Medical Council of India;

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

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

Provided that no more than one member shall be elected from the same dental college;

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

(d) one member from each University established by law in the States which grants recognised 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;

(e) one member to represent each State, nominated by the Government of each such State from among persons registered either in a medical register or a dental register of the State.

Explanation:-- In this clause, "State" does not include a Union territory;

(f) six members nominated by the Central Government, of whom at least one shall be a registered dentist possessing a recognised dental qualification and practicing or holding an appointment in an institution for the training of dentists in a Union territory, and at least two shall be dentists registered in Para B of a State register;

(g) the Director General of Health Services, ex Officio :

Provided that.....

Under Section 4, the Council is a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and shall by the said name sue and be sued. u/s 5, elections to the Council are to be conducted in the manner prescribed and there are Dental Council (Election) Regulations, 1952, but for the purpose of the present controversy we are not concerned with the same. Section 6 deals with the term of office and casual vacancies of the members of the Council and it is as under:--

"6. (1) Subject to the provisions of this section an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer :

Provided that a member nominated under Clause (e) or clause (f) of Section 3, shall hold office during the pleasure of the authority nominating him.

(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council or, in the case of a member whose name is required to be included in a State register, if his name is removed from such register, or if he has been elected under clause (c) of Section 3, if he ceases to hold his appointment as the Principal, Dean, Director or Vice-Principal of a dental college, or as the Head of the dental wing of a medical college, or if he has been elected under clause (b) or (d) of Section 3, if he ceases to be a member of the Medical Council of India or the Dental or Medical Faculty of the University, as the case may be.

(4) a casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible for re-election or re-nomination.

(6) No act done by the Council shall, be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council."

4. As we have seen above, the petitioner was nominated by the central Government under clause (f) of Section 3 of the Act to be a member of the Council by notification dated 24 October 1989. Then his membership stands terminated by the impugned notification dated 9 January, 1990. Respondents say that the membership of the petitioner has been terminated in pursuance of power conferred upon the Central Government under proviso to sub-section (1)

of Section 6 of the Act. In the counter-affidavit filed by the respondent-Union of India no reasons have been given as to why the Central Government thought it fit to remove the petitioner from the membership of the Council before the expiry of the period of five years as is prescribed, and the only plea raised is the doctrine, of pleasure which empowers the Central Government to remove the members so appointed by it as the member holds his office during the pleasure of the Central Government, the authority which nominated him. This provision itself, is challenged as conferring arbitrary powers on the authority concerned. We do not, however, think that this provision is unconstitutional as in the present controversy the authority concerned is the Central Government and discretion has been vested in the authority as high as Central Government. But then we must read into the proviso the rules of natural justice. When a member is nominated to the Council he gets a status and is even entitled to be elected as President and Vice-President of the Council. Suppose in given case a member, so nominated by the authority, is removed by the authority without any rhyme and reason and the member, at the relevant lime is holding the office of the President, he may as well lose the office of the President of the Council. Removal of a nominated member before the expiry of his term is also fraught with civil consequences for him and he may become a subject of ridicule from his fellow professionals. Exercise of power, even though administratively ,if it is not based on reasons, fairness or justness, is invalid and has to be struck down. It is unnecessary for "us to quote chain of authorities of the Supreme Court laying this law in support of this proposition. It is too basic to call for any argument. Professional qualifications of the petitioner as a demist and his eligibility to be nominated on the Council have not been disputed. By an order dated 17 October, 1991 issued by the Government of India in the Ministry of Health and Family Welfare, the petitioner was appointed Honorary Dental Adviser in the Ministry.

5. We find proviso to sub-section (1) of Section 6, introduced by the Amending Act, 1972, is in conflict with sub-section (3) of that section itself. We have examined the Statement of Objects and Reasons while introducing the Bill which ultimately came to be passed as the dentists (Amendment) Act, 1972, but these do not throw any light as to why it was thought necessary to introduce the proviso. If we refer to Section 16 of the General Clauses Act, 1897, it authorises the authority having for the time being power to make appointment, also to have power to suspend or dismiss any person appointed, whether by itself or any other authority in exercise of that power. The Council is a body of professionals looking after the profession of dentistry in the country and as the preamble to the Act would show it was enacted as it was found expedient to make provision for the regulation of profession of dentistry and for that purpose to constitute Dental Council. A member nominated by the authority cannot be removed by it on its whim. As noted above, its action must stand the test of reasonableness, justness and fairness. No ground has been mentioned as to why the authority though it fit to replace the petitioner from the membership of the Council. If there was anything adverse to him he should have been given an opportunity to

represent against that. There may be an exception when some change in policy relating to nominations is subsequently thought of (though consistent with the provisions of the Act) necessitating the replacing of a nominated member. However, we may note that the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , where the State Government had removed embolic of all District Government counsel in the State, observed as under:--

"It is significant to note that emphasis now is on review ability of every State action because it stems not from the nature of function, but from the public nature of the body exercising that function; and all powers possessed by a public authority, howsoever conferred, are possessed "solely in order that it may use them for the public good". The only exception limiting the same, is to be found in specific cases where such exclusion may be desirable for strong reasons of public policy."

6. The action in the present case is per se arbitrary. Mr. Shali, appearing for the Central Government, submitted that doctrine of pleasure as incorporated in the proviso to Section 6(1) of the Act is akin to the pleasure of the President under Art. 310 of the Constitution during which a person holds a civil post under the Central Government. We do not think that provision of the Constitution can be imported in a case like the present one. Pleasure of the President as given in Art. 310 has different implications altogether. We, Therefore, find that removal of the petitioner from the membership of the Council is illegal.

7. Accordingly, notification No. V. 12013/5/88-PMS dated 9 January, 1990 is set aside and it is held that petitioner is entitled to continue as a member of the Council till the expiry of his term as per notification dated 24 October, 1989. It is only unfortunate that the matter has been kept pending all this period and the petitioner could not perform his function as a member. He will have some satisfaction as he has some more months to go before his term expires under the aforesaid notification dated 24 October 1989. Petitioner will be entitled to costs. Counsel fee Rs. 2,000/-. Rule is made absolute.

8. Order accordingly.