

(2012) 10 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 28407 of 2011

Dr. Anil Kumar Chandna

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Dentists Act, 1948 — Section 3(d), 6, 6(3)

Citation : (2012) 8 MLJ 534

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Viduthalai, for Mr. A.V. Bharathi in W.P. No. 28407/2011 and Mr. K. Radhakrishnan, for Mr. A.V. Bharathi in W.P. No. 3655/2012, for the Appellant; N.R. Chandran, for Mr. S. Yaswanth for R1 in W.P. No. 3655/2012 and for R2 in W.P. No. 28407/2011, Mr. P. Ganesan, CGSC for R1 in W.P. 28407/2011, Mr. R. Muthukumarasamy, forcibly for Ms. D. Geetha for R2 to R4 in W.P. 3655/2012 and for R3 and R4 in W.P. 28407/2011 and Mr. AR. L. Sundaresan, for Ms. A.L. Gandhimathi for R5, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. These writ petitions came to be posted on being specially ordered by the Hon"ble Chief Justice vide order dated 07.06.2012. The petitioner in

both writ petitions is one and the same person. In the first writ petition, the petitioner sought to challenge the order of the 4th respondent viz.,

Annamalai University dated 13.09.2011 and the consequential order passed by the second respondent viz., Dental Council of India (for short

DCI) dated 16.09.2011 and after setting aside the same seeks for a direction to hold that the petitioner is deemed to continue as a member of the

Faculty of Dentistry of the third respondent University as well as a Member of the

Dental Council of India till 31.3.2013.

2. When that writ petition came up for hearing on 10.12.2011, this Court directed notice to be issued to the learned Standing Counsel for the

respondents and also private notice to the respondents. On behalf of respondents 3 and 4, a counter affidavit dated 24.06.2012 was filed. Pending

writ petition, in the application for grant of stay, no orders were passed.

3. On notice from this Court, the second respondent DCI has filed a counter affidavit dated 24.01.2012.

4. In the mean while, the same petitioner has filed the second writ petition being W.P. No. 3655 of 2012 seeking to challenge the order of the 4th

respondent University dated 04.01.2012 and the consequential order passed by the first respondent DCI dated 10.01.2012 and seeks to set aside

the same with a consequential direction to the respondents to conduct fresh election for electing a member for the DCI to represent the third

respondent-University.

5. That writ petition was admitted on 15.02.2012. Pending that writ petition, this Court directed the earlier writ petition to be tagged along with the

present writ petition. In the writ petition, on behalf of respondents 2 to 4, a counter affidavit dated 25.06.2012 was filed.

6. The case of the petitioner was that he was appointed as a member of the faculty of Dentistry of the Annamalai University vide proceedings

dated 14.03.2009 for a period upto 31.03.2011. He conveyed his acceptance to the appointment by his letter dated 06.04.2009. In the mean

while, as per the norms of the DCI, the period of the faculty of Dentistry was extended for two more years from 01.04.2011 to 31.03.2013 and

the same was informed to the faculty members including the petitioner by a communication dated 28.04.2009. The petitioner conveyed his

acceptance to work for the extended period from 01.04.2011 upto 31.03.2013 and he was working in that capacity.

7. The profession of Dentistry is governed by the provisions of The Dentists Act, 1948. As per the said provision, one member from each

University established by law in the states which grants a 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, from amongst

the members of the Medical Faculty thereof.

8. It is the case of the petitioner that the Senate of the Annamalai University unanimously elected him as a member of the DCI at its meeting held on

24.10.2009 to represent the University in terms of Section 3(d) of the Dentists Act, 1948. Subsequently, he was elected to the Executive

Committee of the DCI. As per Section 6 of the Dentists Act, the term of office of an elected member of the DCI is for 5 years and hence, he is

entitled to continue as a member of the DCI up to 31.03.2013. He has been regularly attending all the Faculty Meetings including the last one held

on 11.08.2011 except one or two meetings on grounds of ill health.

9. On 16.09.2011, he was called to the office of the DCI by the second respondent herein. He was given a proceeding of cessation of

membership of the DCI along with an email dated 15.09.2011 received by them from Dr. S. Murukesan, the fifth respondent herein, wherein he

forwarded a copy of the letter dated 13.09.2011 issued by the fourth respondent stating that Dr. S. Murukesan (R5) has been nominated in his

place as a member of Faculty of Dentistry in the University upto 31.03.2012 and another letter dated 13.09.2011 issued by the fourth respondent

alleging that since his acceptance to continue as Faculty Member beyond 31.02.2011 was not received, a new member had been appointed as a

Faculty in his place. It is these orders dated 13.09.2011 and 16.09.2011 which are under challenge in the first writ petition.

10. Initially, the petitioner challenged the order before the Delhi High Court and thereafter before the Supreme Court. In W.P.(C)6966 of 2011,

the Delhi High Court by its order dated 22.09.2011 dismissed the writ petition holding that until he challenges the decision of the Annamalai

University as erroneous, the question of his continuing in the DCI will not arise. Therefore, liberty was given to the petitioner to challenge the

decision of the Annamalai University in appropriate proceedings and thereafter, depending upon the outcome of those proceedings to challenge the

decision of the DCI dated 16.09.2011. The petitioner preferred LPA before the Delhi High Court in LPA No. 841 of 2011. A Division Bench of

the Delhi High Court by a judgment dated 14.10.2011 dismissed the appeal holding that communication dated 16.09.2011 issued by the Dental

Council is due to the decision taken by the Annamalai University and therefore

his status as nominee of the Annamalai University is not restored,
the question of his succeeding in the LPA will not arise.

11. The petitioner, thereafter, moved the Supreme Court in SLP (Civil) 30265 of 2011. The Supreme Court by an order dated 18.11.2011

dismissed the SLP after holding that if at all the petitioner will have to move this Court. Hence he was given liberty to move this Court by permitting

him to withdraw the SLP. Thus, the petitioner came to file the present writ petitions.

12. After filing the first writ petition, the petitioner came to know that the casual vacancy arose out of his removal, the third respondent University

has nominated the 5th respondent as a member in the DCI without adhering to the mandatory procedure of election contemplated by the

provisions of Section 3(d) of the Dentists Act read with Regulations 23 and 24 of the Dental Council (Election) Regulations 1952. The Vice

Chancellor of the Annamalai University cannot nominate the 5th respondent in the purported exercise of power vested on him u/s 13(3) of the

Annamalai University Act, 1928. Therefore, it was contended by him that the action of the 3rd respondent in nominating the 5th respondent as a

Member of the DCI and the action of the second respondent in accepting such nomination are illegal and unlawful.

13. In the counter affidavit filed by DCI, it was stated that the Annamalai University by letter dated 28.10.2009 intimated DCI that the Senate of

the University at its meeting held on 28.10.2009 had unanimously elected the petitioner as a member in the DCI to represent it until 31.03.2013 in

the place of Dr. C.R. Ramachandran. The DCI by letter dated 12.11.2009 accepted the membership of the petitioner u/s 3(d) of the Dentists Act

with effect from 22.10.2009 upto 31.03.2013 in the place of Dr. R.C. Ramachandran. The DCI received an email dated 15.09.2011 from 5th

respondent Dr. Murugesan, thereby forwarding a copy of two letters dated 13.09.2011 addressed to him by the Registrar, Annamalai University

stating therein, that he had been unanimously elected as a member of the Faculty of Dentistry, Annamalai University for a period upto 31.03.2011

and another letter dated 13.09.2011 addressed to the petitioner, issued by the Registrar stating therein, that he has been informed about the

extension of tenure until 31.03.2012, but so far the petitioner had not given

acceptance to continue as Faculty Member beyond 31.03.2011 and hence new member has been elected to the Faculty of Dentistry in his place. The DCI, accordingly by letter dated 16.09.2011 informed the petitioner about the provision of Section 6(3) of the Dentists Act that an elected member u/s 3(d) of the Act shall be deemed to have vacated his seat if he ceases to be a member of the Dental Faculty of the University and the invitation sent to him for attending the meeting was cancelled. The third respondent University also informed DCI that the 5th respondent was nominated to represent the University as a member of the DCI for a period upto 31.03.2013 as per decision of the Vice Chancellor in exercise of power u/s 13(3) of the Annamalai University Act which was ratified by the University Senate at its meeting held on 22.10.2011 under Resolution No. 1.06. The University by letter dated 04.01.2012 informed DCI that the 5th respondent was nominated to represent as member in the DCI for a period upto 31.03.2013. The power was exercised by Vice Chancellor u/s 13(3) of the Annamalai University Act and the decision was also placed before the Senate on 22.10.2011 as per the requirements and it was ratified by the Senate. The DCI accordingly informed R5 about his having been accepted as a member of the DCI in terms of Section 3(d) subject to the outcome of the first writ petition. It was accepted that DCI on 28.03.2009 requested all the Universities to take necessary steps to make a provision for five year term of the Dental Faculty in the Statute of the University so that the elected representative of the concerned University can continue as a member of the DCI for a period of five years u/s 3(d) of the Dentists Act.

14. In the counter affidavit filed by respondents 3 and 4, it was stated that initially one Kholi was nominated as a member of the Dental Faculty for the period 01.04.2008 to 31.03.2011 by the Academic Council. The membership in the Dental Council will be co-terminus with the period of his membership as a faculty in the University. The said Kholi resigned from the faculty of the Dentistry of the Annamalai University and the petitioner's name was recommended by the Dean, Faculty of Dentistry for appointment of a faculty member which was approved by the Vice Chancellor and placed before the Syndicate. The Syndicate by its resolution dated 04.03.2009 resolved to appoint the petitioner as member of the faculty of the

Dentistry for the period upto 31.03.2011 for the unexpired portion for which Kholi was appointed. The same was also approved by the Academic Council on 13.03.2009. The petitioner was informed by the University on 14.03.2009 about his appointment as a member of the Faculty of the Dentistry for a period upto 31.03.2011. He was required to send his acceptance. The petitioner gave his acceptance on 09.04.2009 agreeing to serve as a member of the faculty of Dentistry upto 31.03.2011. It was further submitted that the Vice Chancellor placed before the Senate his proposal to elect one member from the Senate from among the members of the faculty of Dentistry to represent the University in the Dental Council and accordingly, the proposal was considered and the Senate of the Annamalai University had elected the petitioner to represent the University in the Dental Council in terms of Section 3(d) of the Dentist Act. The petitioner, by this election could be a member of the Dental Council upto 31.03.2011. The Dental Council suggested amendment of the statute of the Annamalai University to alter the term of dental faculty as five years like many of the Universities in the Country so that elected representative can continue to be a member of the DCI to represent the University for a period of five years. Action was initiated to amend the statutes to alter the period of faculty to five years. After alteration of the said period, a communication was sent to the petitioner on 28.04.2009 informing him about the alteration in the period of faculty in dentistry and his acceptance was requested. The petitioner did not send any acceptance to serve as a member for the extended period from 01.04.2011 to 31.03.2013. The Syndicate took note of the same and passed a resolution on 16.08.2011 recommending the appointment of the 5th respondent as member of the Dental Faculty of the University. Taking note of this fact, the Vice Chancellor of the University passed an order on 12.09.2011 to the effect that petitioner's continuation beyond 31.03.2011 as a member of the Dental Faculty is not valid and he was relieved from being a member of the Dental Faculty. The Academic Council in its meeting held on 21.10.2011 approved the recommendation of the Syndicate. The Senate of the University has also approved the same in its meeting held on 22.10.2011. By the resolution of the Academic Council dated 22.10.2011, 5th respondent was appointed as member of the dental faculty of the University. The petitioner had not submitted any acceptance

letter for the extended period.

15. In the counter affidavit filed in the second writ petition, it was stated by the University that no communication dated 18.05.2009 was received

by the University from the petitioner as alleged. The petitioner never worked in his capacity after 31.03.2011. In fact the petitioner has not

attended the faculty meetings after 31.03.2011. His assertion that he attended faculty meeting held on 11.08.2011 was also denied. It was further

stated that he has not attended any faculty meeting in the year 2010 after he was appointed, as also in the year 2011.

16. u/s 13(3) of the Annamalai University Act, in case of any emergency which, in the opinion of the Vice-Chancellor, requires that immediate

action should be taken, he may take such action and shall immediately thereafter report his action to the authority or officer which or who would

have ordinarily dealt with the matter and such authority or office may confirm, alter or quash such action. Accordingly, the Vice Chancellor's

suggestion/proposal has been considered by the Academic Council and later by the Senate which has approved the said proposal of the Vice

Chancellor.

17. Mr. R. Viduthalai, learned Senior Counsel appearing for Ms. A.V. Bharathi, Learned Counsel for the petitioner submitted that the term

emergency has been defined in the law dictionary and it relates to sudden unexpected happening on unforeseen occurrence or condition; perplexing

contingency. In the present case, there was no such emergency requirement. Since the DCI had directed the University to amend the statute for

giving enhanced term and there was no vacancy and as the petitioner himself was continuing as faculty as per the amended statute, the action of the

University was illegal.

18. The Learned Counsel referred to the judgment of the Supreme Court reported in Satish Chand Makhan and Others Vs. Govardhan Das Byas

and Others, for contending that since the tenure of the petitioner was not brought to an end, he can continue to hold the post.

19. He also referred to the judgment of the Supreme Court reported in RBF Rig Corporation, Mumbai Vs. The Commissioner of Customs

(Imports), Mumbai, that the guiding principles given under Article 226 of the Constitution is promotion of justice and prevention of injustice. In the

present case, not only the tenure of the petitioner was curtailed, but hurriedly the 5th respondent was appointed and nominated to the council only

to circumvent the petitioner's attempt to get relief and hence, the Court should come to the rescue of the petitioner.

20. The Learned Counsel for the respondents contended that the contention of the petitioner was invalid. His continuance in DCI is co-terminus

with his faculty position. When once faculty position had come to an end, the question of his continuing as DCI member will not arise. In the

resultant vacancy, the 5th respondent can be validly appointed and nominated to hold office of DCI. The power exercised by the Vice Chancellor

u/s 13(3) of the Annamalai University Act has been ratified by the competent body of the University and the petitioner cannot question the same.

The contention raised by the respondents is well founded. The petitioner has not made out any case to nullify the action of the University and the

consequential action taken by the DCI. Hence, the writ petitions were liable to be rejected.

21. But before parting with the case, it must be noted that in the present case it looks as if persons who are appointed in the Faculty in honorary

capacities only to facilitate them to get elected to the DCI because such persons may in turn from the DCI may help the nominating bodies

regarding future action by the DCI. The petitioner who is resident of Delhi was nominated from a faculty in a rural district like Cuddalore not for

the purpose of serving the University but only for him to get nominated to the DCI.

22. When questioned about the nature of his faculty position, the learned Senior Counsel for the University fairly admitted that the petitioner was

not drawing any remuneration and was only working in an honorary capacity. In which case the very purpose of university having its faculty

represented in the DCI will become questionable. This is nothing but an in absentia faculty member holding a position in an elected body like DCI.

Similarly even in the case of present nominee viz the 5th respondent, it is alleged that he is dental practitioner at Chennai. Though both writ petitions

are dismissed, it is high time that the DCI investigate such nominations and put an end to such in absentia faculty members representing faculties in

which they have no active teaching role. Also they must make it obligatory that serving full time faculty members are given chance to represent the

representative body of the dentists which alone will serve the object behind the Dentists Act providing for faculty members to be represented in the

DCI. With these observations, both writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.