
(2001) 02 DEL CK 0091
In the Delhi High Court
Case No : CW. No. 1683 of 2000

Dr. Hari Prakash

APPELLANT

Vs

All India Institute of Medical Sciences

RESPONDENT

Date of Decision : 19-02-2001

Acts Referred:

Citation : (2001) 4 AD 429 : AIR 2001 Delhi 296 : (2001) 91 DLT 199 : (2001) 58 DRJ 746

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. Vikas Singh, for the Appellant; Mr. Maninder Singh, for Dental Council of India and Mr. Mukul Gupta for AIIMS, for the Respondent

Judgement

Manmohan Sarin, J.—The petitioner Dr. Hari Prakash, head of the Dental Faculty of the respondent All India Institute of Medical Sciences (hereinafter referred to as AIIMS). has filed this writ petition. He seeks quashing of the decision dated 23.3.2000 of the Academic Committee of the AIIMS, nominating and electing Dr. Naseem Shah as the representative of AIIMS to the Dental Council of India. The petitioner also seeks a declaration that he stands elected to the Dental Council of India u/s 3(d) of the Dentists Act 1948.

2. The grievance of the petitioner is that on 18.10.1999, the Dental Faculty of AIIMS, unanimously proposed his name as the representative of the respondent AIIMS to the Dental Council of India, for a term of 5 years u/s 3(d) of the Dentists Act 1948, yet the Academic Committee did not forward his name to Dental Council of India. The representative of the respondent AIIMS, to the Dental Council of India was to be elected out of the Dental Faculty u/s 3(d) of Dentist Act. All the members of the Dental Faculty, had unanimously proposed the name of the petitioner, the Academic Committee of the respondent Therefore, acted illegally and in perversity, in rejecting the candidature of the petitioner and instead electing Dr. Naseem Shah, who had herself proposed the name of the petitioner. There was also difference of opinion on this issue,

between the members of the Academic Committee itself. Not only this, Dr. Naseem Shah herself wrote to the AIIMS, declining to accept her nomination and reiterating that the petitioner had been unanimously proposed and nominated by the Dental Faculty.

3. The writ petition had come up before the court on 20.4.2000. Notice to show cause was issued and the operation of the decision dated 23.3.2000 of the Academic Committee was stayed. The respondent AIIMS in the meanwhile had informed the Dental Council of India vide its letter dated 13.4.2000, that Dr. Naseem Shah had been unanimously elected u/s 3(d) of the Dentists Act 1948. Vide orders dated 26.4.2000, Dental Council of India was directed to be impleaded as a party. Dr. Naseem Shah was also added as a party to the petition vide orders dated 18.7.2000. Counsel for the parties were heard and orders were reserved on 17.10.2000.

4. The relief in writ petition turns on interpretation of Section 3(d) of the Dentists Act 1948. Before noticing the rival contentions and submissions as urged, it would be appropriate to briefly give the factual matrix, as relevant for the present case.

(i) Petitioner was elected in the year 1993 to fill up the vacancy arising from the retirement of Dr. S.S. Sidhu to the Dental Council of India. This was to be for the unexpired period of Dr. Sidhu's term.

(ii) The Dental Council of India in May 1995, asked the AIIMS to explain whether the petitioner had been elected by the Senate or the Court of the University, as provided for in Section 3(d) of the Dentists Act, 1948. The AIIMS, in reply, explained the formation of the Institute and that petitioner's candidature had been approved by the Chairman of the Academic Committee, which was equivalent to a Senate of a University.

(iii) In July 1995, the Dental Council of India unilaterally decided to delete the name of the petitioner from the membership of the Council, on the ground that the nomination and election of the petitioner did not satisfy the requirements of Section 3(d) of the Act. Petitioner, perforce, filed Civil Writ Petition No. 2859 of 1995, challenging the said deletion. A Division Bench of this Court, vide its judgment dated 3rd July, 1996, held that AIIMS was a deemed University and equated the Academic Committee of the AIIMS with the Senate of a University and the Governing Body to the Court of a University. The Dental Council of India has preferred a SLP in the Supreme Court against the said judgment. The application for stay of the judgment of the Division Bench was rejected. However, the SLP was admitted to hearing and Appeal No. 14743/96 is pending.

(iv) In July 1997, the Academic Committee of the AIIMS, from amongst its dental faculty, had elected the petitioner. It is petitioner's case that this was not communicated to the Dental Council of India in view of the pendency of the Civil Appeal.

(v) On 18th October, 1999 the Dental Faculty of AIIMS unanimously proposed the name of the petitioner for a term of five years as representative of AIIMS to the Dental Council of India u/s 3(d) of the Dentists Act. The petitioner informed the AIIMS that since his candidature had been unanimously proposed by all the members of the Dental Faculty, his name be placed before the Academic Committee for election to the Dental Council of India. Vide its meeting on 23rd of March, 2000, the Academic Committee rejected the proposal to elect the petitioner to the Dental Council of India and, instead, elected and nominated Dr. Naseem Shah to the Council. As noted above, it is this decision which the petitioner has challenged by way of this writ petition.

(vi) During the pendency of this writ petition, petitioner moved CM. 5322/2000 for impleadment of the Dental Council and Dr. Naseem Shah, which was allowed. Petitioner also moved CM.5657/2000 for being permitted to attend the meetings of the Dental Council of India. In view of the case being fixed for hearing, this application was also disposed of.

(vii) Petitioner also moved CM.7097/2000 seeking stay of election to the Executive Committee of the Dental Council of India on the ground that he continued to be a member and since he was not being permitted to participate in the meetings, the elections should be stayed. Clarification was also sought that since the Court had stayed the decision of the Academic Committee, nominating Dr. Naseem Shah, petitioner continued to be a member of the Dental Council of India. The application was disposed of without staying the elections to the Executive Committee of Dental Council of India, holding that the same would be subject to the outcome of the writ petition.

(viii) Pleadings have been completed. Dr. Naseem Shah, in her counter affidavit, has confirmed the position that all the members of the Dental Faculty had unanimously proposed the name of the petitioner. Further, that she had declined her nomination for personal reasons and withdrawn in favor of the petitioner since the name of the petitioner had been unanimously proposed by the Dental Faculty, Dr. Naseem Shah.

(ix) The respondent AIIMS in its counter affidavit has taken the position that the decision of the Academic Committee under the Statute has to be implemented and that the decision of the Academic Committee was independent of the recommendation and nomination by the Dental Faculty.

(x) The Dental Council of India has taken the position that on receipt of the intimation from the Academic Committee of the election of Dr. Naseem Shah, they had deleted the name of the petitioner from the register on 13rd April, 2000 itself and inserted the name of Dr. Naseem Shah. It has also urged that the present writ petition is not maintainable in view of the remedy of reference to Central Government of any dispute relating to election available to the petitioner u/s 5 of the Dentists Act, 1948.

(5) Learned counsel for the petitioner, Mr. Vikas Singh, has urged before me that

representative to the Dental Council of India had to be elected out of the members of the Dental Faculty and where the Dental Faculty is not in existence, from the Medical Faculty. Admittedly, in AIIMS there is a Dental Faculty. All the members of the Dental Faculty had unanimously proposed the name of the petitioner, who was the Professor and Head of the Department. Since petitioner was the only candidate whose candidature had been put up and was eligible and qualified, he was entitled to be elected unopposed by the Academic Committee. The Academic Committee could not reject his candidature, unless there was some disqualification attached to the petitioner. There was no question of any voting since petitioner was the only candidate. Learned counsel further urged that petitioner's position stood vindicated as Dr. Naseem Shah, who had been elected by the Academic Committee, has informed the AIIMS that she would not take up the assignment and she had withdrawn in favor of the petitioner. Counsel for the petitioner also urged that, in these circumstances, petitioner was entitled to continue with his membership of the Dental Council of India. It is urged that the action of the Dental Council of India in preventing the petitioner from attending the meetings of the Dental Council was, Therefore, illegal.

6. Mr. Maninder Singh, appearing for Dental Council of India, opposed the writ petition, as being not maintainable. He submitted that Dr. Naseem Shah had been validly elected by the Academic Committee, as the representative to the Council. It was petitioner's own case that he had been unanimously proposed and elected only by the Dental Faculty, as is evident from the averments made in the writ petition and the communication dated 22.10.1999, addressed by the petitioner to the Institute. Learned counsel, Therefore, submitted that the Dental Faculty could not take away the powers of the Academic Committee in electing representatives to the Dental Council of India. Hence, the writ petition was wholly mis-conceived. Learned counsel further submitted that pursuant to the intimation received from the Institute, Dental council of India had, on 30.12.2000, deleted the name of the petitioner and included the name of Dr. Naseem Shah, as a member. Learned counsel urged that petition was also not maintainable on account of the existence of remedy of reference to Central Government. This aspect is discussed later.

Learned counsel for the respondent All India Institute of Medical Sciences, Mr. Mukul Gupta, urged that it was the decision of the Academic Committee which has to be implemented irrespective of any nomination or recommendation by the members of Dental Faculty. He also produced the relevant record.

(7) In the background of the aforesaid facts and rival contentions, let us consider the case of the petitioner, which turns on the interpretation of Section 3(d) of the Dentists Act. It would be worthwhile to reproduce Section 3(d) of the Act:

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

(a)

(b)

(c)

(d) 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 of the University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof;

(8) On a plain reading of Section 3(d), as reproduced above, it would be seen that it is the function of the Senate of the University and in case there is no Senate by the members of the Court of the University to elect the representative from amongst the members of Dental Faculty. Based on the decision of Division Bench of this Court in CWP. No. 2859/95 titled Dr. Hari Prakash Vs. Dental Council of India dated 3.7.1996, for purposes of Section 3(d), AIIMS has been treated as a deemed University and the Academic Committee equivalent to the Senate of the University. Parties are ad idem on this aspect.

9. The function of electing a representative to the Dental Council of India is that of the Academic Committee. The question, Therefore, to be considered is whether the Academic Committee could, while exercising and discharging its powers and functions u/s 3(d) reject the candidature of a candidate from the Dental Faculty, even if his name had been unanimously proposed by the members of the Dental Faculty. The answer to this is in the affirmative. In my view, petitioner's submission that the Academic Committee was bound to elect the petitioner, since the Dental Council has unanimously proposed his name and there was no other candidate, is mis-conceived. Accepting this would tantamount to the Dental Faculty usurping the powers and functions of the Academic Committee and the same would be contrary to the express provisions of the statute, which has conferred this function on the academic committee. The statute does not make any provision for even a recommendation being made by the Dental Faculty.

(10) The meaning of word "election" in the British Encyclopedia is given as "a formal process of selecting a person for public office, accepting or rejecting a political proposition by voting", while "voting" is described as a "formal expression of opinion or Will that indicates approval or disapproval of a proposal, motion or candidate for office." Collin's English Dictionary defines "election" as, "the Selection by vote of a person or persons from among candidates for a position, especially a political office. The act or an instance of choosing." The Webster's Comprehensive Dictionary, International Edition gives the meaning of "election" as, "the selection of a person or persons for office as by ballot. A choice, as between alternatives, choice in general."

Reference may also be usefully made to the judgment of the Supreme Court in Dinesh Prasad Yadav Vs. State of Bihar and Others, . The Court while dealing

with a case under the Bihar Co-operative Societies Act, 1935, held as under:

"The expression "election", Therefore means selection of a person by vote or even otherwise. When a person is nominated by way of selection on the basis of a given criteria from amongst several persons, then in the broader sense he is elected to the office."

The Dentist Act does not define the term "election" and, Therefore, the above broad meaning has to be applied.

(11) It would be seen that the mandate of the statute u/s 3(d) of the Act, it is for the Court of University or the Academic Committee in the instant case, to elect a representative to the Dental Council. This election has the element, rather character, of selection. The members of the Academic Committee could themselves select or choose a candidate. In case of there being a proposal, it could either be approved or disapproved. It is evident, that it is the Academic Committee which has the final say in selecting, accepting or rejecting a proposal or recommendation, as may have been made to it. The power of electing or approving by process of voting also includes the power to reject a proposal or disapprove the recommendation.

(12) The original record has been perused. The meeting of the Academic Council was held on 23.3.2000, wherein eight members participated, including the Chairman. The original Minutes, as typed, were as under:

Item No. A.C. 21:

Election to Dental Council of India of Prof. & Head, Deptt. of Dental Surgery u/s 3(d) of the Dentists Act, 1948 as AIIMS Representative.

"The proposal was not approved. However, the Academic Committee resolved to nominate Dr. (Mrs.) Naseem Shah of the Department of Dental Surgery to the Dental Council of India as AIIMS representative."

The approved Minutes of the concerned item, with correction as initialled by the Chairman, are as under:

"The Academic Committee Unanimously elected Dr. (Mrs.)Naseem Shah of the Department of Dental Surgery to the Dental Council of India as AIIMS representative."

(13) Learned counsel for the petitioner submitted that two members of the Academic Committee, viz. Dr. Rajendra Tandon and Dr. (Mrs.) Manju Sharma had subsequently protested against the course of action adopted. Dr. Mrs. Manju Sharma is stated to have left the meeting after some time. Dr. Rajendra Tandon had, on receiving a representation from the petitioner, forwarded the same to the Director of the AIIMS, calling for reconsideration of the matter. Be that as it may, even if the subsequent protest by Dr. Rajendra Tandon and Dr. (Mrs.) Sharma was to be reckoned, it would still leave an overwhelming majority of the members of the Academic Committee, who elected Dr. (Mrs.) Naseem Shah as

the AIIMS representative to the Dental Council of India. The Academic Committee was fully within its authority not to accept the recommendation of the members of Dental faculty and instead elect another eligible person. It may be noted that the Dentists Act 1948 does not provide for or even contemplate any proposal or recommendation to be collectively made by the members of the Dental Faculty. The entire responsibility vests with the Academic Committee, which it to elect a member from the Dental Faculty and in cases where there is no dental faculty, then from the medical faculty.

(14) Normally, the process of election has alternatives to choose from and the electorate exercises its Will. However, in a case like the present one, where there are no prescribed rules for either inviting nominations, the Academic Committee was fully within its authority and jurisdiction to consider any proposal that it received from the members of the dental faculty and reject the same and instead elect another eligible person. The decision of the Academic Committee, in view of the discussion above, is not vitiated by any illegality and is fully within the four corners of the statutory provision.

(15) At this stage, notice may also be taken of another objection raised by the counsel for the respondent who has urged that the writ petition is not maintainable on account of existence of an alternate remedy by way of reference before the Central Government u/s 5 of the Dentist Act 1948. Section 5, in terms, provides that elections under this Chapter shall be conducted in the prescribed manner and where there is any dispute regarding any such election, it shall be referred to the Central Government, whose decision shall be final. Learned counsel also relied on Gujarat University Vs . N.U. Rajguru and Others : (1994)IIILLJ3SC , where the High Court had entertained the writ petition relating to a dispute of election of teachers to the Court of University. This under the statute was required to be referred to the Central Government. On an objection being taken on the maintainability of the writ petition, the Supreme Court held that the High Court committed an error in entertaining the writ petition and setting aside the election of the member of the Court.

(16) In reply, Mr. Vikas Singh, learned counsel for the petitioner, relied on the following authorities:

(i) Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, ;

(ii) State of U.P. and Others Vs. Indian Hume Pipe Co. Ltd., ;

(iii) Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, ;

(iv) Ram and Shyam Company Vs. State of Haryana & Ors. (1995) 3 SCC 267

to urge that where the impugned order is without jurisdiction and a nullity, the existence of an alternate remedy would not be a bar to the maintainability of a writ petition. He submitted that the present case raised a pure question of law

and if no investigation on facts was required, the writ petition would be maintainable even though the alternate remedy was not exhausted. Lastly, the rule of exhaustion of statutory remedies is a self-imposed limitation. It is a rule of policy and discretion and the Court may issue writ in exceptional and deserving cases, even if the statutory remedy was not exhausted.

(17) There cannot be any dispute with regard to the correctness of the aforesaid legal propositions. While it is correct that the remedy by way of reference of an election dispute to the Central Government exists in this case and the Court would not normally entertain the petition, however, since the case involved the question of interpretation of Section 3(d), the parties were heard on merits. The writ petition has been found to be devoid of merit. The existence of an alternate remedy u/s 5 of the Act would, Therefore, be an additional ground warranting its dismissal.

(18) While dismissing the writ petition, certain directions and observations are called for. A piquant situation has arisen. The proposal of the members of the Dental Faculty to nominate the petitioner was not accepted by the Academic Committee. The representative elected by the Academic Committee of AIIMS has declined to assume the responsibility as member of the Dental Council of India. A vacancy has, Therefore, arisen in the Council to be filled by a representative from AIIMS. It is hoped and expected that the Academic Committee of AIIMS, which comprises eminent professionals and senior functionaries, would act in its wisdom with sagacity and elect a representative expeditiously, to ensure that the premier Institute of national importance does not remain unrepresented in the Dental Council of India. Let the Academic Committee of AIIMS elect its representative to the Dental Council of India, from amongst all eligible candidates, including the petitioner, within 30 days from today in terms of Section 3(d) of the Dentists Act, 1948.