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**(2010) 07 KL CK 0156**

**In the High Court Of Kerala**

**Case No : WA. No. 808 of 2010 & Writ Petition (C) No. 6140 of 2010**

Dr. Joseph Issac

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 21-07-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 1, 14, 226  
Dentists Act, 1948 — Section 10A, 18, 2, 3, 3(F)  
General Clauses Act, 1897 — Section 3, 3(58)

**Citation : (2010) 07 KL CK 0156**

**Hon'ble Judges : Jasti Chelameswar, C.J;P.N. Ravindran, J**

**Bench : Division Bench**

**Advocate : K. Radhakrishnan and Asok M. Cherian, for the Appellant; T.P.M. Ibrahim Khan and Asst. Solicitor General of India for Respondents 1 and 2, Sajeev Kumar K. Gopal, S.C. for D.C.I. for 3rd Respondent, K.P. Sudheer, for 5th Respondent, H.B. Shenoy and B. Ashok Shenoy for 6th Respondent and T.R. Ravi, for 7th Respondent, for the Respondent**

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## **Judgement**

Jasti Chelameswar, C.J.—W.P. (C) No. 6140 of 2010 is filed for the following reliefs:

(i) Issue a writ of certiorari or any other appropriate writs, directions or orders quashing Ext. P-1.

(ia) Issue a writ of certiorari or any other appropriate writs, directions or orders calling for the records relating to Ext. P-3 and quash the same.

(ii) Issue a writ of mandamus or any other appropriate writs, directions or orders directing Respondents 1 and 2 to frame guidelines for nomination u/s 3(f) of the Dentists Act, 1948 and to publish the same and to keep in abeyance all further nominations till such regulations are prepared and published.

(iii) Issue a writ of mandamus or any other appropriate writs, directions or orders directing Respondents 1 and 2 to nominate the Petitioner as a member of Dental Council of India u/s 3(f) of the Dentists Act, 1948.

(iv) Render such other orders as are deemed fit and proper in the circumstances of the case.

During the pendency of the writ petition, the Petitioner sought an interim order, staying all further proceedings pursuant to Exhibit P-I. Such an interim order was declined by the learned Single Judge by order dated 18th May, 2010. Aggrieved by the same, the Petitioner carried the matter in appeal in W.A. No. 808 of 2010. In view of the importance of the matter, we thought it fit to hear the writ petition itself and, accordingly, the writ petition was also posted along with the Writ Appeal and the matter was heard.

2. Petitioner in the writ petition is a Dental Surgeon, Professor in Orthodontics, a member of Indian Dental Association and an elector to the Dental Council of India (for short "DCI"), constituted by the Dentists Act, 1948, hereinafter referred to as "the Act". The Government of India issued a notification (Exhibit P-1) dated 15-2-2010, by which Respondents 4 to 7 in the writ petition were nominated to the DCI constituted u/s 3 of the Act. Section 3 of the Act specifies the composition of the DCI. An examination of the Section would indicate that some of the members are required to be nominated and some of the members are to be elected to the DCI, the details of which would be examined later. From the notification dated 15-2-2010, it appears that Respondents 4 to 7 were nominated under Clause (f) of Section 3 of the Act. It is this notification and more particularly the nomination of Respondents 5 and 7 which is challenged in the writ petition.

3. The learned Counsel appearing for the Respondents 5 to 7 raised a preliminary objection that this Court does not have the territorial jurisdiction to entertain the writ petition as no part of the cause of action arose within the territory or limits of this Court to exercise its jurisdiction under Article 226 of the Constitution. According to the learned Counsel, since the impugned notification is issued by the Government of India and the nominations are made by the Government of India, New Delhi, the cause of action or the grievance of the Petitioner arose exclusively within the jurisdiction of the Delhi High Court and not of this Court.

4. In AIR 1949 78 (Privy Council) the Privy Council had an occasion to examine the phrase "cause of action". At para 46, it held:

The phrase "cause of action" has not been defined in any enactment, but the meaning of it has been judicially considered in various decisions. In *Read v. Brown* (1989) 22 Q.B.D. 128 : 58 L.J.Q.B. 120 Lord Esher, M.R., accepted the definition given in *Cook v. Gill* (1873) L.R. 8 C.P. 107 : 42 L.J.C.P. 98 that it meant "every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved".

Fry, L.J. agreed and said, "Everything which, if not proved, gives the Defendant an immediate right to judgment, must be part of the cause of action". Lopes, L.J.

Said:

I agree with the definition given by the Master of Rolls of a cause of action, and that it includes every fact which it would be necessary to prove, if traversed, in order to enable a Plaintiff to maintain his action.

This decision has been followed in India. The term has been considered also by the Board. In *Mt. Chand Kour v. Partab Singh* (1887-1888) 15 I.A. 156 : 16 Cal. 98 P.C. Lord Watson delivering the judgment of the Board observed as follows:

Now the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set out in the plaint as the cause of action; or, in other words, to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour.

It can be seen from the above that a bundle of facts, the existence of each of which is required to be proved for obtaining the relief from a Court, go into the making of the cause of action for a *lis*. Article 226 declares that jurisdiction of this Court extends to every case where the cause of action either wholly or in part arises within the territories over which this Court exercises jurisdiction. The existence of some nexus to any one of the facts in the bundle of facts constituting the cause of action, with the territory over which this Court exercises jurisdiction, is sufficient to enable this Court to exercise such jurisdiction. The various facts which go into the constitution of the cause of action can be classified as the facts the existence of which constitute (1) the legal rights of the person or (2) the legal obligations owed to the person seeking relief from a Court.

5. The impugned notification of the Union of India, published in the Gazette of India, evidences the nominations made by the Government of India to DCI (a statutory body corporate). DCI is the apex body created by the Act to regulate the profession of Dentistry in the entire country. It has the authority to recognise or derecognise any qualification in Dentistry. The prior permission of the Government of India contemplated u/s 10A for the establishment of an institution for imparting training for grant of recognised dental qualification is required to be given only in consultation with the DCI. Such investiture of authority necessarily affects the entire society and all the people of India, either directly or indirectly. Therefore, to deny ourselves the jurisdiction on the basis of the location of the office of the DCI or on the belief that seat of office of the Government of India is located in Delhi would be a pedantic understanding of the jurisdiction of this Court and unjust to the people of this country. We are of the opinion that the Union of India, which has the statutory authority to make nominations u/s 3 of the Act, owes a legal and constitutional obligation to every person, who is subject to the laws of this country, to act rationally and in accordance with the requirements of Article 14. Such a Constitutional obligation, in our view, flows from the fact that the Government of India is charged with the obligation under the Dentists Act to enforce the provisions of the Act by

appropriate executive action including the constitution of the DCI. We regret our inability to accept the preliminary objection.

6. Before we examine the submissions made by the learned Senior Counsel for the Petitioner Shri K. Radhakrishnan on the merits of the case, we deem it appropriate to examine the scheme of the Act in so far as it is relevant for us. The Act initially applied only to British India, but was later extended to the whole of India. Section 3 of the Act contemplates the establishment of a Council and prescribes the composition of the said Council. Section 3 reads as follows:

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

(a) one registered dentist possessing a recognized 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 not 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 a recognized 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 recognized dental qualification and practising 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 Part B of a State register;

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

Provided that pending the preparation of registers the State Governments may nominate to the first Council members referred to in parts (a) and (e) and the Central Government members referred to in part (f) out of persons who are eligible for registration in the respective registered and such persons shall hold office for such period as the State or Central Government may, by notification in the Official Gazette, specify.

7. Section 18 of the Act requires the DCI to maintain a register of dentists, to be known as "the Indian Dentists Register", which is nothing but compilation of all the entries contained in all the "State registers" of dentists prepared u/s 31 of the Act. Section 31 obligates each of the States to cause the preparation of a register for the dentists of the State in the manner prescribed under the Act (Chapter IV). The Register prepared by the State shall be two parts, known as "Parts A & B". The further details of such registers may not be relevant for the purpose of this case.

8. u/s 3 of the Act, the composition of the DCI is as follows: (1) one qualified registered dentist elected by the dentists registered in Part A of each State register; (2) one member elected by the members of the Medical Council of India; (3) not more than four members elected by various persons specified in Section 3(c); (4) one member from each University established by law in the State which grants a recognised dental qualification and such member is to be elected in the manner prescribed u/s 3(d); (5) u/s 3(e), one member nominated by the Government of each State shall become the member of the Council, but the choice of the State to nominate u/s 3(e) is limited only to the persons registered either in a medical register or a dental register of the State; (6) under Clause 3(f), six members are required to be nominated by the Central Government. Of the six members, at least one shall be a "registered dentist", an expression defined in Section 2(j)\* of the Act. Further, such a registered dentist is required to possess a "recognised dental qualification" defined u/s 2(j)\*\* and either practising or holding an appointment in an institution for the training of dentists in a Union territory. The further requirement in Clause (f) of Section 3 is that of the six members to be nominated by the Central Government under the above mentioned provision, at least two members shall be dentists registered in Part B of a State Register.

9. Coming to the merits of the case, as already noticed earlier, it is the nomination of Respondents 5 and 7 in the writ petition which is under challenge. The learned Counsel for the writ Petitioner Shri K. Radhakrishnan argued that in so far as the 5th Respondent is concerned, his nomination to the DCI constituted u/s 3 of the Act is illegal on the ground that the Allahabad High Court passed strictures against the 5th Respondent who, in his capacity as Professor and Head of Department of Operative Dentistry, Faculty of Dental Sciences, King George's Medical University, Lucknow, was found to have tampered with the answer scripts of a particular student. The relevant allegation in this regard in the writ petition is as follows:

It is submitted that against the 5th Respondent strictures have been passed by the Lucknow Bench of the Allahabad High Court in the decision reported in 2005 (23) L.C.D. 509 and a fine of Rs. 25000 was awarded against her. The said fine was imposed on the ground that she had fabricated and manipulated the answer sheet of Ortho Dontists theory paper as well as practical by down gradation of the marks. She was directed to pay the fine within one month from the date of the judgment and in case there is failure to deposit the cost within the stipulated period, the Vice Chancellor was directed to recover the amount from the head of the department's salary and sent the money to the court within one month thereafter. Out of this cost Rs. 15000 was directed to be paid to the Petitioner in the writ petition and the remaining Rs. 10000 was directed to be deposited in the legal aid cell of the High Court. Now such a person who was found responsible for fabrication and manipulation of the answer sheet was nominated by the Central Government for being considered to be a member of the Dental Council of India.

A copy of the judgment in Special Appeal No. 314 of 2004 on the file of the Allahabad High Court, wherein the 5th Respondent figured as the Appellant, is also placed before us in support of the pleading. We may also state that the learned Counsel appearing for the 5th Respondent did not dispute the allegation that the 5th Respondent was found guilty of some inappropriate conduct as alleged by the Petitioner. The learned Counsel for the 5th Respondent also fairly admitted the fact that the order of the Allahabad High Court was unsuccessfully challenged before the Supreme Court. In the background of such undisputed facts, the question is whether the Government of India was justified in law in nominating the 5th Respondent to the DCI.

10. The learned Counsel for the writ Petitioner Shri K. Radhakrishnan argued that "the nomination of such a person would certainly reduce the dignity of the institution" and inconsistent with the legal obligation of the Government of India to act rationally. The learned Counsel placed reliance on the judgment reported in *N. Kannadasan v. Ajoy Khose* (2009) 7 S.C.C. 1 in this regard. The question before the Court in that case was whether a person, who was earlier an Additional Judge of the Madras High Court, but who eventually was not appointed as permanent Judge of the Madras High Court on the ground of certain adverse reports against him, was entitled to be appointed for Anr. public office, i.e. the President of the State Consumer Disputes Redressal Commission. The Supreme Court opined that the Appellant before it could not have been appointed and at para 148 held as follows:

We have found hereinbefore that the Appellant was not eligible for appointment to a public office (emphasis ours) and in any event the processual machinery relating to consultation was not fully complied with.

In coming to such a conclusion, the Supreme Court placed reliance on *Union of India (UOI) and Others Vs. Kali Dass Batish and Another*, . In *Kali Dass Batish*'s case (supra), at page 787, para 13, it was held by the Supreme Court as follows:

13. ...It must be remembered that a member of an Administrative Tribunal like CAT exercises vast judicial powers, and such member must be ensured absolute judicial independence, free from influences of any kind likely to interfere with independent judicial functioning or militate there against. It is for this reason, that a policy decision had been taken by the Government of India that while considering members of the Bar for appointment to such a post, their antecedents have to be verified by IB. The antecedents would include various facts, like association with anti-social elements, unlawful organisations, political affiliations, integrity of conduct and moral uprightness. All these facts have necessarily to be verified before a decision is taken by the appointing authority to appoint a candidate to a sensitive post like member of CAT. In Delhi Administration through its Chief Secretary and Others Vs. Sushil Kumar, this Court emphasised that even for the appointment of a constable in police services, verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable for a post under the State. Even if such candidate was found physically fit, had passed the written test and interview and was provisionally selected, if on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a constable, the view taken by the appointing authority could not be said to be unwarranted, nor could it be interdicted in judicial review. These are observations made in the case of a constable, they would apply with greater vigour in the case of appointment of a judicial member of CAT. It is for this precise reason that Sub-section (7) of Section 6 of the Act requires that the appointment of a member of CAT cannot be made "except after consultation with the Chief Justice of India".

As rightly pointed out by the learned Counsel for the writ Petitioner, the Apex Court always emphasized on the need for clean antecedents while making appointments to public offices, high or low.

11. In the instant case, the 5th Respondent is appointed as a member of the DCI, which has sweeping powers in the area of regulating the professional standards of Dentists and also establishment and maintenance of educational institutions imparting training in Dentistry. The submission of the learned Counsel, in our opinion, is unanswerable and, therefore, necessarily the writ petition, insofar as it seeks a declaration that the nomination of the 5th Respondent to the DCI illegal, is required to be allowed.

12. The 7th Respondent--Dr. Janak Raj Sabharwal--was earlier nominated to the DCI in the year 2001. From the notification of the Government of India, Ministry of Health and Family Welfare dated 16-11-2001, published in the Gazette of India, which is marked as Exhibit P-4 herein, it appears that the 7th Respondent was nominated in the purported exercise of power u/s 3(e) of the Act by the Government of National Capital Territory of Delhi to be member of the DCI. The relevant portion of the notification reads as follows:

Nirman Bhawan, New Delhi, Dated the 16th November, 2001.

## NOTIFICATION

S.O. ...Whereas in pursuance of Clause (e) of Section 3 of the Dentists Act, 1948 (16 of 1948), Dr. J.R. Sabharwal has been nominated by the Government of National Capital Territory of Delhi to be members of the Dental Council of India.

Now, therefore in pursuance of Clause (e) 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 24th January, 84, namely,

After serial number 19 and the entry relating thereto, the following serial number and entry shall be added, namely:

"20. Dr. J.R. Sabharwal, Nominated Government of 16-11-2001" C-214, Vikaspuri, National Capital New Delhi-110018 Territory of Delhi

(S.K. Rao) Director (ME).

It appears from the record that the nomination of the 7th Respondent in the year 2001 was preceded by a request from the 7th Respondent dated 27-4-2001, a copy of which is filed as Exhibit P-2, wherein he claimed that he had acquired a great experience of twenty years in the field of Dentistry, in the following words:

Sir, I am a Post Graduate in Dentistry (Specialist in Oral and Maxillofacial Surgery) and registered Dentist in PART-A, practising in Delhi. I have acquired about 20 years of experience in the field of Dentistry. I have worked in the most prestigious hospitals of Delhi, viz. Dr. Ram Manohar Lohia Hospital, Safdarjung Hospital, Sir Ganga Ram Hospital, Jaipur Golden Hospital and Mata Chanan Devi Hospital, New Delhi. I had also been a "Scientist" Pool Officer under Council of Scientific & Industrial Research (CSIR). Presently I am running my own clinic in West Delhi for the last 10 years where all the facilities required for complete Dental care are available. Besides, I also have more than 10 years teaching experience as a Faculty Member in a Minority Dental College.

13. The fact that the 7th Respondent came to be appointed as a member of the DCI in the year 2001 as a nominee of the National Capital Territory of Delhi [under Section 3(e) of the Act] by the Government of India is further corroborated by letter dated 19th July, 2006 of the Government of India in the Ministry of Health and Family Welfare. The said letter was addressed to the writ Petitioner herein in response to his application under the provisions of the RTI Act, 2005. The relevant portion of the said letter is as follows:

(4) On the same analogy, the recommendation of NCT of Delhi nominating Dr. J.R. Sabharwal as their representative in Dental Council of India as a Member u/s 3(e) of the Dentists Act, 1948 (16 of 1948) was accepted and a notification accordingly issued, vide the Notification dated 16-11-2001, issued on this Ministry's file of even No. A copy of the notification enclosed for perusal.

14. The Government of India issued the impugned notification (Exhibit P-1) dated 15-2-2010 (published in the Gazette of India) once again nominating the 7th Respondent herein to the DCI along with 3 other members. In the said notification, the Government of India purports to exercise the powers conferred on it u/s 3 of the Act and purports to nominate the Respondents 4 to 7 u/s 3(f) of the Act. The relevant portion of the notification reads as follows:

Nirman Bhawan, New Delhi, Dated the 15th February, 2010.

#### NOTIFICATION

In exercise of the powers conferred u/s 3 of the Dentists Act, 1948 (16 of 1948), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Health and Family Welfare No. S.O. 430 dated 24th January, 1984 namely:

In the said notification under head "Nominated under Clause (f) read with proviso to Section 3" for Serial Nos. 1 to 4 and the entries relating thereto, the following shall be substituted therein, namely:

\* \* \* \* \*

4. Dr. Janak Raj Sabharwal, Nominated Central 15-2-2010 Professor & HOD , Government Department of Oral Surgery, Harsharan Das Dental College, Ghaziabad, Uttar Pradesh

F. No. V. 12013/2/2009-DE

Sd. (Debasish Panda) Joint Secretary to the Government of India.

15. As already noticed, Section 3, Sub-clause (f) contemplates the nomination by the Government of India of six members to the DCI, of whom at least one is required to be either practising Dentist or holding an appointment in an institution for training of Dentists in a Union Territory. Therefore, the substance of the 15th February, 2010 notification is that the 7th Respondent is nominated by the Government of India apparently on the consideration of his holding an appointment in an institution for training of Dentists. However, the description of the 7th Respondent in the said notification is that he is a Professor and Head of Department, Department of Oral Surgery, Harsharan Das Dental College, Ghaziabad, Uttar Pradesh. We, therefore, may safely presume that the 7th Respondent was sought to be nominated under the category of a person holding an appointment in an institution for the training of Dentists; but the fact remains that even according to the notification dated 15th February, 2010 the 7th Respondent was holding such an appointment in an institution located in Uttar Pradesh and not in a Union Territory. Subsequently (perhaps realising the difficulty), a corrigendum notification dated 26th February, 2010, which is marked as Exhibit P-3 (the relevant portion of which is extracted below) came to be issued, wherein the address of the 7th Respondent is shown as "C-214, Vikas Puri, Delhi - 110018".

Nirman Bhawan, New Delhi, Dated the 15th February, 2010.

#### CORRIGENDUM

In partial modification of this Ministry's Extraordinary Notification of even number dated 15th February, 2010, the entries against Sl. No. 4 may be read as under:

4. Dr. Janak Raj Sabharwal, Nominated Central Government 15-2-2010 C-214, Vikas Puri, Delhi-110018 F. No. V. 12013/2/2009-DE

(K.V.S. Rao) Deputy Secretary to the Government of India.

We presume that the address shown in the corrigendum notification is the residential address of the 7th Respondent. We presume so in view of the content of Exhibit P-2 letter addressed by the 7th Respondent to the Minister for Health and Family Welfare, the relevant portion of which is extracted earlier. In the said letter, the 7th Respondent gives his Clinic's address as "KG-1/424, Vikas Puri, New Delhi 110018".

16. In the background of the above-mentioned facts, the Petitioner attacks the nomination of the 7th Respondent on the following grounds--(1) that, as per the Exhibit P-1 notification none of the four nominees (Respondents 4 to 7) are shown to have any nexus with the Union Territory. All four of them are shown to be teachers of various colleges located in Maharashtra, Uttar Pradesh, Rajasthan and Uttar Pradesh respectively. It is, therefore, the submission of the Petitioner that while Section 3(f) of the Act authorises the Central Government to make nomination of six members to the DCI, it is the requirement of the said provision that of the 6 at least 2 should be Dentists registered in Part B of a State Register (contemplated u/s 3(1) and thereby leaving scope for the nomination of only 4 persons possessing a recognized dental qualification, of whom at least one should be having a nexus with a Union Territory, either as a practising Dentist or as an academician associated with an institution for training of the Dentists; (2) that, the Central Government, while nominating the 7th Respondent earlier in the year 2001, purported to exercise its power u/s 3(e) which enables each State in the Union of India to nominate one member and obligates the Central Government to accept the nomination of each State and appoint such nominees of the States to the DCI. Therefore, the Central Government chose to treat the National Capital Territory of Delhi as a "State" within the meaning of Section 3(e) of the Act for the purpose of nominating the 7th Respondent to DCI. But, when it came to the nomination of the 7th Respondent in the year 2010, now it chooses to nominate the 7th Respondent purportedly in exercise of the power u/s 3(f) of the Act treating the National Capital Territory of Delhi as a Union Territory. According to the learned Counsel for the Petitioner, a plain reading of Exhibit P-1 notification indicates that all the four nominations made under Exhibit P-1 are persons engaged/associated with an institution for training of Dentists in the various States specified therein and none of the said four persons are associated with any training institution in any Union Territory. Subsequently, the

Government of India having realised the lacuna chose to issue the corrigendum notification dated 26-2-2010 in Exhibit P-3 to make it appear that the 7th Respondent is a resident of National Capital Territory of Delhi. The relevant portion of the pleading in the writ petition is at paras 9 and 10, which reads as follows:

It is an attempt to make it appear that the nomination of the 7th Respondent is from Delhi and to contend that there is representation for Union Territory in compliance with Section 3(f).

(emphasis ours)

\* \* \* \* \* Hence it is obvious that Delhi cannot be treated as a Union Territory for the purpose of nomination u/s 3(f) of the Act. So Ext. P-3 will not save the situation and there is nobody from Union Territory nominated u/s 3(f) of the Act.

According to the writ Petitioner, Exhibit P-3 is per se illegal "since it was issued with ulterior motive and mala fide intention". The learned Counsel also argued that though the expression "State" occurring in Section 3(e) of the Act does not include a Union Territory in view of an explanation appended to Section 3, the explanation cannot have the effect of amending the substantive portion of the provision. In this regard, the learned Counsel relied on the decision of the Supreme Court in *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*. He, therefore, contended that the National Capital Territory of Delhi is a "State" as defined under the General Clauses Act, 1897 and as was understood by the Central Government in the year 2001 (as can be seen from Exhibit P-5); but, the said view is now sought to be altered by the Central Government only in order to accommodate the 7th Respondent in the DCI. Therefore, the entire exercise of nomination of the 7th Respondent is not only arbitrary, but also vitiated by mala fides.

17. The submission of the learned Counsel for the Petitioner in so far as it relates to the various factual allegations mentioned above are indisputable, i.e., that the Central Government while appointing the 7th Respondent in the year 2001 to the DCI acted on the recommendation of the Government of the National Capital Territory of Delhi (NCT) resorting to the power available u/s 3(e) of the Act, which is possible only if NCT is treated as a "State". According to the Under Secretary to Government of India, who issued Exhibit P-5 document in exercise of a statutory obligation arising under the RTI Act, 2005, the reasons of the Central Government for appointing the 7th Respondent resorting to the power u/s 3(e) of the Act are as follows:

(2) The Ministry of Home Affairs indicated that the Constitution (Sixty-ninth Amendment) Act, 1991 provided for a Legislative Assembly for Delhi with powers to make laws with respect to any of the matters enumerated in the State List or in the Concurrent List except matters with respect to public order, police and land. The Legislative Assembly of Delhi along with the Parliament have the powers to legislate on issues relating to education including technical education,

medical education and universities. It was thus open to Delhi to enact laws as any other State in respect of medical education. Under these circumstances, though technically NCT of Delhi still remains as UT, its Legislative Assembly has been assigned the powers of the State Government on all other items enumerated in the State List and Concurrent List except on the 3 items mentioned earlier. In view of this position, the Ministry of Home Affairs recommended that the Governments of NCT of Delhi and Pondicherry may be treated at par with other States (emphasis ours) and allowed to make nominations for their Members to the Medical Council of India.

(3) Agreeing with the above comments of the Ministry of Home Affairs, the Ministry of Law, Justice & Company Affairs, expressed the opinion that there was no Constitutional or legal objection to nominating Dr. Prem Aggarwal as a Member of the MCI. On the basis of the above views of the Ministries of Home Affairs and Law, Justice & Company Affairs, the Central Government issued a notification on 27-7-1999 nominating Dr. Prem Aggarwal as a Member of MCI from NCT of Delhi.

18. We must straight away state that on the interpretation of the laws, the opinions expressed by various functionaries of the Government--either Central or State--are certainly not conclusive, though they are entitled for due weightage. It must be noted that from the language employed in Exhibit P-5 that even by the said document the National Capital Territory of Delhi is not treated as a "State", but it is sought to be "treated at par with other States and allowed to make nominations for their Members to the Medical Council of India".

19. The expressions either "State" or "Union Territory" are not defined under the Act. Article 1\* of the Constitution of India declares "India" to be a "Union of States" and, further, declares that the Territory of India is comprised of the Territories of the States and the Union Territories specified in the First Schedule to the Constitution. In Schedule 1 of the Constitution there are two parts. Part I deals with the various States and Part II deals with the Union Territories. Part VI of the Constitution deals with the "States" and their constitutional set up, whereas Part VIII deals with the Union Territories and their constitutional set up. The General Clauses Act, 1897, which is applicable both to the interpretation of the Constitution and the Dentists Act, defines the expression "State" u/s 3(58) as follows:

(58) "State".--(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State; and (b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory.

It can be seen from the above definition that subsequent to the Constitution Seventh Amendment Act, 1956, the expression "State" occurring in any Central Act is to be understood to mean not only a "State" specified in the 1st Schedule

to the Constitution, but also Union Territories specified in the said Schedule. However, the opening clause of Section 3 of the General Clauses Act declares that the definitions contained in the said Act are valid so long as there is nothing repugnant in the subject or context of the enactment in which those expressions are used. Coming to the Dentists Act, Section 3(e) Explanation makes it explicit that in the context of Section 3(e) of the Act, the expression "State" occurring therein does not include a Union Territory. In other words, the legislature did not intend that the definition of the expression "State" occurring in the General Clauses Act should govern the meaning of the expression "State" occurring in Section 3(e) of the Act.

20. The learned Counsel for the Petitioner, however, placed reliance on a decision reported in Sundaram Pillai's case (supra) and argued that the object of an Explanation in a statute is only to explain the meaning and intendment of the Act where there is any obscurity or vagueness in the main enactment, but not to curtail the operation of the substantive provisions of the Act. We do not see how the above referred decision assists the submission made by the learned Counsel for the Petitioner. No doubt, in the above decision the principles of the interpretation of an Explanation occurring in a statute are examined and held:

53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is--

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

But, in the context of Section 3(e) of the Dentists Act, we do not see any ambiguity which demands the application of any special principle of interpretation of statutes to understand the expression "State" occurring therein.

21. Coming to the 2nd limb of the submission made by the learned Counsel for the Petitioner: assuming for the sake of argument that the Government of India had opined in the year 2001 that the National Capital Territory of Delhi is to be

considered as "State" for the purpose of Section 3(e) of the Act, nothing prevents the Government of India from reconsidering its understanding of the law. The issue is whether the current understanding of the Government of India that the National Capital Territory of Delhi is "Union Territory" is in accordance with the scheme and language of the Dentists Act, 1948 or not? We have already noted earlier that for the purpose of the Constitution, the National Capital Territory of Delhi is a Union Territory, as declared under Article 1 of Schedule 1 to the Constitution of India. We also noted that the definition of the expression "State" occurring in the General Clauses Act is to be applied to such an expression occurring in other enactments of the Parliament subject to the condition that there is nothing repugnant or inconsistent with the subject or context of the enactment in which such expression occurs. In the context of both Sections 3(e) and 3(f) of the Dentists Act, the expression "Union Territory", in our opinion, must be understood in the sense it is understood in the Constitution, but not under the General Clauses Act. The fact that the Government of India at an earlier point of time wrongly understood the expression "State" occurring in Section 3(e) of the Act as "including the National Capital Territory of Delhi" does not make such understanding binding for all time on the Government of India and certainly does not bind this Court while examining the legality of Exhibit P-1.

22. Coming to the question of the basis on which the 7th Respondent is chosen for the purpose of nomination to the DCI, it is stated in the counter- affidavit filed on behalf of the Respondents as follows:

The contention of the Petitioner that none of the members nominated by the Central Government to the Dental Council of India (DCI) u/s 3(f) of the Dentists Act, 1948 belong to the Union Territory of India is wrong. Dr. Janak Raj Sabharwal (Registration No. A3248 of Part A of the State Register) is a resident of Delhi and he is working as a Professor and Head of the Department of Oral Surgery, Harsarn Das Dental College, Ghaziabad, a NCR region of the Delhi and practicing at Vikas Puri, New Delhi. This fact has been stated in this Ministry's corrigendum dated 26th February 2010 to the Notification.

(emphasis ours)

It is not very clear from the above extracted pleading as to whether it is the teaching experience of the 7th Respondent or the experience of the 7th Respondent as a practising Dentist which was taken into consideration for the purpose of nomination. In so far as teaching experience is concerned, the affidavit is very vague in the sense that whether the teaching experience relates to any institution in the Union Territory of India is not clear. The statement "...is working as a Professor and Head of Department of Oral Surgery, Harsarn Das Dental College, Ghaziabad, a NCR region of Delhi...." without any explanation as to what is meant by NCR, in our view, is only misleading. No doubt, as asserted by the counter-affidavit of the 7th Respondent, he is a practising Dentist at Vikas Puri, Delhi, a fact even admitted by the Petitioner at para 7 of the writ petition, which would establish a sufficient nexus between the 7th Respondent and the

National Capital Territory of Delhi (a Union Territory) for being considered for nomination to DCI u/s 3(f) of the Act. But, as we have already indicated, the Government of India does not disclose the factors which exactly weighed with the Government of India while nominating the 7th Respondent to the DCI, i.e., whether the teaching experience of the 7th Respondent or the practical experience as a practising Dentist in a Union Territory. On the other hand, the counter only speaks about the residence of 7th Respondent in Delhi. On the other hand, the successive nominations of the 7th Respondent to the DCI by the Government of India under some Clause or the other of Section 3 of the Dentists Act and the manner in which the instant nomination proceedings are issued, in our view, clearly demonstrates the utter arbitrariness of the process of nomination. We hasten to add that we are not expressing any opinion regarding the suitability of the 7th Respondent, either on the basis of his teaching experience or practical experience, we are only on the arbitrary nature of the whole process adopted by the Government of India.

In the result, the writ petition is partly allowed, declaring that the Exhibit P-1 notification in so far as it pertains to the nomination of Respondents 5 and 7 to the DCI is unsustainable and, therefore, is quashed in so far as Respondents 5 and 7 are concerned. In view of our decision in the writ petition, no separate order is required to be passed in the writ appeal and the same is closed.