

(2013) 06 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (C) No"s. 177 of 2012 and 2482 of 2013

Dr. Manjula Das

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Dentists Act, 1948 — Section 3, 3(d), 5

Citation : AIR 2013 Guw 165 : (2013) 3 GLD 876

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.C. Borbora, Mr. M.A. Smith and Dr. M. Bora, for the Appellant; N.J. Dutta, CGC, Mr. T. Chutia, Mr. L.P. Sharma, Standing Counsel, GU and Mr. Sunil Murarka, for the Respondent

Judgement

Biplab Kumar Sharma, J.—Heard Mr. A.C. Borbora, learned senior counsel, assisted by Mr. M.A. Smith and Dr. M. Bora, learned counsel for the petitioner. Also heard Mr. N.J. Dutta, learned CGC as well as Mr. T. Chutia, learned counsel representing the respondent No. 6. I have also heard Mr. L.P. Sharma, learned Standing Counsel, Gauhati University and Mr. Sunil Murarka, learned counsel representing the respondent No. 7 in WP (C) No. 177/2012, who is the respondent No. 6 in the other writ petition being WP (C) No. 4842/2013. The matter pertains to election/nomination of member to the Dental Council of India from amongst the eligible electors. While in the 1st writ petition being No. WP (C) 177/2012, the prayer made is for setting aside and quashing the Annexure-E notification dated 07.12.2011, by which the Returning Officer of election to Dental Council of India and Assam State Dental Council has referred the particular complaint lodged by the respondent No. 7/6 to the Central Government purportedly as per the provisions of the Dentist Act, 1948. By the said notification, the counting of votes that was scheduled to be held on 09.12.201 under Rule 16 of the Dental Council (Election) Regulations, 1952 has been postponed. According to the petitioner, the election having been held, the Returning Officer ought to have declared the results thereof, instead of referring

the matter to the Central Government referring to the provisions of the Dentist Act, 1948, which according to him has no application at the stage of declaration of results. It is the further prayer of the petitioner to issue a direction to the Returning Officer to declare the results.

2. In the 2nd Writ petition, the petitioner has prayed for setting aside and quashing of the election/nomination of the respondent No. 7/6 to the Dental Council of India by the Gauhati University. In this connection he has challenged the Annexure-3 notification dated 09.12.2013, issued by the Registrar, Gauhati University, notifying that as per the AGM of Gauhati University Court held on 29.01.2013, the respondent No. 7/6 stood elected as a member of the Dental Council of India for a period of 5 years w.e.f. 29.01.2013. According to the petitioner, such nomination/election having been obtained by respondent No. 7/6 by suppressing the fact of the aforesaid election, in which he had participated and pendency of the earlier writ petition being WP (C) No. 177/2012, by which, withholding the result of the election has been put to challenge, such election/nomination is violated and liable to be interfered with.

3. As noted above, the impugned notification dated 07.12.2011 has been issued by the Returning Officer postponing the counting of votes that was scheduled to be held on 09.12.2011 and referring the matter to the Central Government for a decision, is on the basis of the complaint lodged by the respondent No. 7/6. For a ready reference, the two complaints lodged by the said respondents, both dated 23.11.2011 are quoted below (relevant extract):-

Sir,

I. Dr. A.C. Bhuyan, the President of Assam State Dental Council would like to bring to your kind notice about the anomalies and irregularities created in conducting the said election process as stated below.

1. You have notified that the ballot paper would be issued with effect from 21st October 2011. It is observed that the ballot papers have not been issued in time and as a result many of the electorates residing in places like Tripura, Mizoram, Nagaland, Arunachal Pradesh, Manipur and Meghalaya etc. have not received the ballot paper, though the closing date is fixed on 8th of December 2011. Even some of the voters in the State of Assam (even in Gauhati) itself have not yet received their ballot papers as informed to me.

2. As the DCI Election regulation under Chapter II, clause (a) of Section 3 page 5, the envelope containing the guidelines, declaration form and the ballot papers should have been sent under Registered Post. However, such envelope must be dispatched through post offices under certificate of posting.

3. It is observed that this mandatory requirement in conducting the election is not followed.

4. Further, it is not understood, how a particular candidate could collect a huge number of envelope bearing the name and address of voters personally delivered

to the voter. That particular candidate is approaching several voters in different places to personally collect their vote so as to send the votes by registered post as required under the rules to the returning officer.

5. As per Dentist Act, a registered dentist is required to intimate in writing for any change of address to the Registrar of the State Dental Council. The particular candidate has changed the address of many such eligible voters in association with the Council office without writing application from the concerned registered dentist.

Under the above circumstances, I and several senior registered dentist of the North East are convinced that the election procedure to conduct the election to the DCI is vitiated and lots of malpractices are adopted.

This is for your kind appraisal and necessary action.

Sir,

I, Dr. A.C. Bhuyan, the President of Assam State Dental Council would like to bring to your kind notice about the anomalies and irregularities created by the returning officer for conducting the said election process as stated below.

1. The returning officer notified that the ballot paper would be issued with effect from 21st October 2011. It is observed that the ballot papers have not been issued in time and as a result many of the electorates residing in places like Tripura, Mizoram, Nagaland, Arunachal Pradesh, Manipur and Meghalaya etc. have not received the ballot paper, though the closing date is fixed on 8th of December 2011. Even some of the voters in the State of Assam (even in Gauhati) itself have not yet received their ballot papers as informed to me.

2. As the DCI Election regulation under Chapter II, clause (a) of Section 3 Page 5, the envelope containing the guidelines, declaration form and the ballot papers should have been sent under Registered Post. However, such envelope must be dispatched through post offices under certificate of posting.

3. The returning officer has not followed this mandatory requirement in conducting the election. A few envelopes bearing no marking like U.C.P/ registration number and enclosed as proof.

4. Further, it is not understood, how a particular candidate could collect a huge number of envelope bearing the name and address of voters personally delivered to the voter. That particular candidate is approaching several voters in different places to personally collect their vote so as to send the votes by registered post as required under the rules to the returning officer.

5. As per Dentist Act, a registered dentist is required to intimate in writing for any change of address to the Registrar of the State Dental Council. The particular candidate has changed the address of many such eligible voters in association with the Council office without writing application from the concerned registered dentist.

Under the above circumstances, I and several registered dentist of the North East are convinced that the election procedure to conduct the election to the DCI is vitiated and lots of malpractices are adopted.

In view of the above situation, I request the appellate authority to kindly say the election procedure and order an enquiry by a competent authority.

4. During the course of hearing, the learned counsel for the parties have referred to the provisions of the Dentist Act, 1948 and the Dental Council (Election) Regulation, 1952. Section 5 of the Act prescribes the mode of elections. As per the said provisions, elections shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Central Government, whose decision shall be final. Regulation 17 of the Dental Council (Election) Regulations 1952 dealing with the declaration of results, provides that when the counting of the votes have been completed, the returning officer shall forthwith declare the candidate or candidates to whom the larger number of valid votes has been given to be duly elected and shall forthwith inform each successful candidates by letter that he has been elected to the Council. Regulation 10 provides for publication of results requiring the returning officer to report the result and date of election to the State Government, who in turn, shall communicate the information to the Government of India. The Central Government shall then publish the results in the Gazette of India and the State Government shall thereafter, republish the notification of the Central Government in the Official Gazette of the State Government.

5. Regulation 20 lays down the procedure for setting aside election. Before setting aside an election u/s. 5, the Central Government shall give an opportunity to all the parties concerned to show cause why the election should not be set aside. A decision u/s. 5 is required to be given on the enquiry and report of any person appointed by the Central Government in that behalf.

6. On a total reading of the aforesaid provisions of the Dentist Act, 1948 and the Dental Council (Election) Regulations 1952, published by the Dental Council of India, it is seen that section 5 of the said Act comes into operation after publication of results as envisaged under regulation 19 preceded by declaration of results as required under Regulation 17. As noted above under Regulation 20, before setting aside an election u/s. 5, opportunity of being heard is required to be given to the parties, coupled with furnishing of enquiry report by the person appointed by the Central Government in that behalf.

7. In the instant case, on the basis of the aforesaid complaints lodged by one of the contesting parties i.e. respondent No. 7/6, the returning officer issued the impugned notification dated 07.12.2011, postponing the counting of votes that was scheduled to be held on 09.12.2011. As has been shown in Annexure-I document dated 09.12.201, there were three contesting candidates namely the petitioner; respondent No. 7/6 and one Dr. Jogeswar Barman with elector No. 22, 46 and 117, respectively. The said document itself reflects that total number of

elector as per final electoral Roll was 858, after expiry of one of the elector's, the number stood at 857. Total number of ballot papers received by the returning officer by registered post was 629. Other details have also been furnished in the said document.

8. If we look into the complaints dated 23.11.2011, lodged by the respondent No. 7/6 quoted above, there is vague and indefinite allegations in respect of conducting the election. Moreover, the electors whom the complaint has referred to are not named in the complaints. They are also not aggrieved by the election that was conducted. In the counter affidavit filed by the respondent No. 7/6, the Annexure-11 series, purportedly copy of the complaints addressed to the returning officer have been annexed. Out of the said documents numbering about 31, most are undated. That apart, the language employed in the letters are also identical and all are purportedly from Manipur. From the said documents, it is not discernible as to when the same were forwarded to the returning officer or in fact was forwarded to him or not. In this context, Mr. A.C. Borbora, learned senior counsel, appearing for the petitioner, submits that the said documents are fictitious and product of forgery. He further submits that the case will have to be decided on the basis of the impugned notification and the respondent No. 7/6 cannot be permitted to develop his case. In this connection, he has referred to the decision of the Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

9. Above apart, as per the provisions of Regulation 11(5), no election shall be invalid by reason of an elector not receiving his voting paper, provided that the voting paper have been issued to him in accordance with the regulations.

10. If we go by the aforesaid complaints annexed with the counter affidavit filed by the respondent No. 7/6, the same plea is alleged non receipt of ballot papers. As noted above, all the complaints are mostly from Manipur and mostly are undated. It is an admitted position that although as per the requirement of the regulations, the ballot papers are required to be sent under certificate of posting, the said procedure having been abolished by the postal department, the said procedure could not be adopted, but it is not the case of any elector that ballot papers were not received by him/her.

11. The impugned notification dated 07.12.201 is by now about 11/2 years old and yet the Central Government has not been able to take any decision in the matter. In this context, the learned counsel for the petitioner submits that since it is not an election dispute as envisaged in the aforesaid provision, the Central Government is not in a position to take any decision. In the counter affidavit filed by the Central Government, referring to the impugned notification, it has been stated that certain quarries had been made by sending letters to the returning officer. However, there is no any whisper as to whether the postponement of the declaration of result by the impugned order amounts to any election dispute requiring interference of the Central Government.

12. On a total reading of the Act and the Regulations, it is amply demonstrated that a dispute would arise only when the election results are declared. Once the election results are declared, the party aggrieved by such declaration of results can always raise election dispute required to be adjudicated upon by the Central Government. If the election is called off on the basis of the complaint of contesting party, a situation may arise in which there may not be finality to the election. A party apprehending defeat in the election may raise certain objections and if such objections are referred to the Central Government on the ground of being election dispute, there will be no finality to the election and even declaration of election results will be stalled. Needless to say that once the process of election gets into motion, normally, it should be brought to its logical conclusion and should not be allowed to be stalled midway.

13. In the instant case, only on the basis of the complaints lodged by the respondent No. 7/6 and no other electors, the counting of votes was postponed by the impugned notification dated 07.12.2011 and even after expiry of 11/2 years, there is no finality to the election. In the above referred document dated 09.12.2011, issued by the returning officer indicating a total number of electors and the total number of ballot papers received by registered post, there is signature of all the three contesting parties including the respondent No. 7/6, accepting the said contents. Thus the said document was accepted by all the contesting parties, but it was on the basis of the above mentioned complaint lodged by the respondent No. 7/6, the returning officer passed the impugned order.

14. In view of the above, I am of the considered opinion that the Central Government has no role to play at this stage since the election results are yet to be declared. Upon declaration of the election results, it will always open for the contesting parties to challenge the same on the grounds that may be available to them.

15. In view of the above, the writ petition being WP (C) No. 177/2012 is allowed, directing the returning officer i.e. the respondent No. 6 to declare the results of the election forthwith. Depending upon the outcome of the declaration of results, the future course of action shall govern.

16. This now leads us to the 2nd writ petition being WP (C) No. 4842/2013, in which the petitioner has challenged the election/nomination of the respondent No. 7/6 by the Gauhati University, vide the notification dated 09.02.2013.

17. In the counter affidavit filed by the Gauhati University, it has been contended that there were three applicants seeking nomination to the Dental Council of India. The said three applicants were the Principal, Regional Dental College, Guwahati; the Vice Principal, Regional Dental College, Guwahati (respondent No. 7/6) and Dr. Swargajyoti Das, Associate Professor, Regional Dental College, Guwahati. The name of the respondent No. 6/7 was proposed by one Dr. B.R. Bhuyan and seconded by Sri Himangshu Medhi. They are the members of

University Court. It was by the said procedure, the respondent No. 7/6 was elected/nominated to the Dental Council of India.

18. The grievance of the petitioner is that the said respondent No. 7/6 already having contested the election could not have been nominated/elected to the Dental Council of India. It is the case of the petitioner that, but for the withholding of the said fact from the Gauhati University, it could not have elected/nominated the respondent No. 7/6 to the Dental Council of India.

19. In the counter affidavit filed by the Gauhati University, it has been stated that the University did not have any knowledge of contesting the election by the respondent No. 7/6. However, it has been stated that he was elected/nominated to the Dental Council of India as per the provisions of Section 3(d) of the Dentist Act, 1948.

20. Section 3(d) of the said Act makes provisions for election/nomination of one member from each University established by law in the stated which grants recognized dental qualification. The issue that falls for consideration of this Court is as to what would have been the position, if it had been made known to the University that the respondent No. 7/6 seeking nomination/election to the Dental Council of India was also a contesting candidate in the regular election. As stated in the counter affidavit filed by the Gauhati University, the said fact was not known to it. Even the pendency of the first writ petition being WP (C) No. 177/2012 was also not known to the University. Pursuant to the direction issued in WP (C) No. 177/2012, once results of the election are declared and if the respondent No. 7/6 is found to have been elected, he cannot continue to remain as elected member and at the same time nominated member of the University. That apart, the University authority will also have to consider as to what would have been the position, if it had been made to known to it that the respondent No. 7/6 had already contested the election, results of which were waiting.

21. Mr. Murarka, learned counsel for the respondent No. 7/6 has questioned about the very locus-standi of the writ petitioner in filing the writ petitions and/or questioning the election/nomination of the said respondent by the University. In this connection, he has placed reliance on the decision of the Apex Court reported in Gujarat University Vs. N.U. Rajguru and Others, , so as to contend that dispute relating to election cannot be gone into by the High Court exercising its writ jurisdiction and that if the situation provides alternative remedy, the same should be pursued before invoking the writ jurisdiction.

22. Needless to say that ratio of any decision will have to be understood in the background of the fact situation involved in each and every case. In the decision referred to above, by enacting Section 58 of the Gujrat University Act, 1949, the Legislature had constituted a Forum for the determination of the disputes in respect of matters specified therein. In the said case, it was contended that the election of 28 members was bad in law. The respondent teachers of the University duly participated in the election, but before declaration of the results

of the election, they filed a writ petition seeking the relief of setting aside the election of 28 members and for a direction to hold fresh election.

23. Unlike the aforesaid case, in the instant case the issue is as to whether the returning officer could withhold the declaration of results indefinitely or should declare the results forthwith as contemplated in the regulations referred to above. As has been held above, the complaints lodged by the contesting party before declaration of results cannot constitute an election dispute. If the regulation requires declaration of results forthwith by the returning officer, he has no other option, but to declare the results. Thereafter, if any party is aggrieved by the declaration of results, it will always be open for the said party to raise dispute to be adjudicated upon by the Central Government.

24. In view of the above, the 2nd writ petition being WP (C) No. 2482/2013 stands disposed of, remanding the matter back to the Gauhati University for a fresh decision as to whether the election/nomination of the respondent No. 7/6 would have been any material affect in view of the withholding of the fact of contesting the election and filing of the 1st writ petition being WP (C) No. 177/2012 and the exchanging of affidavits therein by the respondent No. 7/6. Let the University take a fresh decision in the matter as expeditiously as possible, preferably within 01 (one) month. Depending upon the outcome of the said fresh decision and also the results of the election now required to be declared in terms of the direction contained in WP (C) No. 177/2012, the future course of action in the matter shall govern. Both the writ petitions are answered in the above manner, leaving the parties to bear their own costs.