
(2007) 01 PAT CK 0131
In the Patna High Court
Case No : C.W.J.C. No. 14681 of 2006

Dr. Munshi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Citation : (2007) 01 PAT CK 0131

Final Decision : Allowed

Judgement

S.N. Hussain, J.—Heard learned Counsel for the petitioner, learned Counsel for the State learned Counsel for the Secretary, Homoeopathy Central Council. New Delhi (respondent No. 5), learned Counsel for the Returning Officer, Central Council of Homoeopathy Election (respondent No. 6) and learned Counsel for the Registrar, Bihar State Homoeopathic Medicine Board (respondent No. 7)

2. This writ petition is being heard and finally disposed of at this stage itself at the instance of the parties.

3. The petitioner is aggrieved by the notification of the Principal-cum-Returning Officer regarding election notice published in Dainik Jagaran, a daily news-paper dated 07.11.2006, by which the election schedule has been published for holding section of 03 (three) members for the Central Council of Homoeopathy for Bihar and Jharkhand.

4. The election in question is with respect to the members of the Central Council of Homoeopathy, New Delhi and has to be governed by the Homoeopathy Central Council (Election) Rules, 1975 (hereinafter referred to as "the Rules" for the sake of brevity). u/s 21 of Development of Homeopathic System of Medicine Act, 1953 (hereinafter referred to as "the Act" for the sake of brevity), it is the duty of the Registrar to maintain the register of Registered Homoeopathic Practitioners and from time to time revise the same, whereas, Section 22 of the Act provides that the person who passes the qualifying examination shall be entitled to have his name entered in the register. As per Section 24 of the Act, the Registrar has to

keep the register correct and up-to-date, whereas, Section 25 of the Act provides that the report of death has to be made before the Registrar for removal of name from the register. Section 26 of the Act prohibits entry in, or removal from the registers whereas, Section 28 provides for publication of names entered in the register in every year published in the official gazette by the Registrar. Rule 3 of the Rules clearly speaks that all persons whose names are enrolled on a State Register of Homoeopathy, shall be entitled to vote at the election of members under Clause (a) of Sub-rule (1), whereas, Rule 6 of the aforesaid Rules provides that question of addition or removal of the names has to be referred to the Returning Officer, who shall decide the same.

5. Learned Counsel for the petitioner submits that according to the specific provision of law, State Register has to be prepared for the Bihar and Jharkhand separately after their bifurcation, but without doing the same, although a long period has lapsed since then, no separate State Register has been prepared. He further submits that the list provided by the Registrar is only registered list, whereas, an electoral roll has to be published as per separate State Registers. He also states that even the said list is of old list prepared before the bifurcation of the State and only some names have been subsequently added and hence it can neither be said to be a proper State Register nor can it be legally presumed to be an electoral roll.

6. Learned Counsel for the petitioner also submits that one month statutory time has to be granted for the purpose, which was not granted and hence the entire procedure of election was frivolous. Although in paragraph 16 of the writ petition, Rule 13(4) of the Rules has been challenged, but learned Counsel for the petitioner submits that he is withdrawing the same as the petitioner does not want to challenge the said Rules.

7. Learned Counsel for the Registrar (respondent No. 7) and learned Counsel for the Returning Officer (respondent No. 6) submit that since in the State of Jharkhand no separate Board has been constituted nor the list of enrolled Medical Practitioner has been bifurcated, an order has been passed by the Central Government issued under the signature of the Deputy Advisor (Homoeo), government of India, Ministry of Health and Family Welfare (AYUSH) on 05.10.2006 (Annexure R/1 to the counter-affidavit) by which it was clearly emphasized that since after creation of the State of Jharkhand no separate Register of Homoeopathy practitioners has been established in Jharkhsand nor the Register of the practitioners in the erstwhile State of Bihar has been bifurcated or separately maintained for the present States of Bihar and Jharkhand, the election to the Central Council of Homoeopathy, which has already been initiated, shall be conducted jointly for both the States of Bihar and Jharkhand. He further submits that the Returning Officer has already sent a letter to the Registrar on 27.03.2006 (Annexure R/2 to the counter-affidavit), in which one month time was clearly granted, whereafter, on 25.07.2006 (Annexure 2A of the counter affidavit), the Registrar sent a letter to he Returning Officer

along with the electoral roll. He further submits that even according to the petitioner's claim no one has been shown to be aggrieved and in case of any objection for addition or deletion of the names, the returning Officer can be moved by the person concerned under the provision of Rule 6 of the Rules.

8. After hearing learned Counsel for the parties and after perusing the materials on record and the provisions of law, it is quite apparent that the statutory period of one month had already been granted by the authorities concerned and hence the said requirement of law has been fulfilled. It is also clear that it had already been decided by the concerned authority, namely, Government of India, Ministry of Health and Family Welfare, Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH) that the election to the Central Council of Homoeopathy from the erstwhile State of Bihar, which has already been initiated, shall be conducted jointly for both the State of Bihar and Jharkhand and all registered practitioners whose names appear in the State Register of Homeopathy maintained by the Bihar Board of Homoeopathy System of Medicine, Bihar shall be eligible to contest and vote in these elections in terms of the provisions of the Homoeopathy Central Council (Election) Regulation, 1975. In the said circumstances, non-separation of the State Register or the electoral roll for both the parts of the erstwhile united Bihar cannot be faulted with.

9. So far as the list, which is placed before this Court is concerned, it appears to be merely a registered list, whereas, according to the provision of law, electoral roll has to be published. It is apparent from the said list that against the names of the Doctors, neither the State is mentioned nor correct present districts are mentioned and hence it has been prepared as per the position prior to the bifurcation of the State. Joint registered list or joint electoral roll does not mean that the list should be allowed to remain as it was prior to the bifurcation of the State of Bihar. The list prepared for the election is completely in teeth of the provision of law, according to which up-to-date list has to be prepared every year and electoral roll has to be published in accordance thereof. But here in the instant case, although the date of the said list is mentioned as 30.06.2006. But it clearly appears from the list that it is the same list, which had been prepared much before the bifurcation of the State of Bihar and only some names have been added at the end, hence it does not fulfil the criterion fixed by law. It is apparent that proper election was not possible also because to most of the candidates the ballot papers could not reach due to clear defects in their respective addresses.

10. The law is well-settled that where the voters list has been prepared against the provisions of law or on the basis of non-existent Rules, it would be illegal and the Court can interfere under Article 226 of the Constitution of India. Reference may be made to the decision of the Hon'ble Apex Court in case of *Pundlik Vs. State of Maharashtra and Others*, and in case of *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, .

11. In the aforesaid facts and circumstances, the impugned notification (Annexure 1) published in Dainik Jagar, a daily newspaper dated 07.11.2006 and subsequent processes with respect to the election concerned is hereby quashed. Respondent No. 7-Registrar, Bihar State Homoeopathic Medicine Board is directed to prepare a registered list in accordance with the provisions of law and observations made above and on this basis publish a fresh electoral roll and only thereafter elections should be held in accordance with law. Since the matter is urgent with respect to the election concerned, respondent No. 7 is directed to complete the said process expeditiously without any delay.

12. This writ application is, accordingly, allowed.