
(2012) 08 RAJ CK 0167

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1068 of 2012

Dr. Tara Prakash Yadav

APPELLANT

Vs

Dr. Pankaj Sharma and Others

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Citation : (2013) 1 WLN 249

Hon'ble Judges : Arun Mishra, C.J.; Narendra Kumar Jain, J

Bench : Division Bench

Advocate : Rajendra Soni, for the Appellant; Sandeep Saxena, Advocate, for the Respondent No. 1, Mr. S.S. Raghav, Advocate, for the Respondent No. 2 and Mr. S.N. Kumawat, AAG, for the Respondents No. 3 to 5, for the Respondent

Judgement

Arun Mishra, C.J.—Leave to file appeal is granted. IA No. 25165/2012 is disposed of. Documents are taken on record. IA No. 25166/2012 is also disposed of.

2. Heard finally with the consent of learned counsel for the parties.

3. The appellant has questioned legality of the order dt. 30.07.2012 passed by Single Bench in the course of writ petition No. 10986/2012. Respondent No. 1 has filed the writ application before the Single Bench in which prayer has been made to quash and set aside notice No. 2012/12 dt. 12.07.2012 and to direct the respondents to continue with the election process following the notice No. 2012/11 dt. 12.07.2012 as per scheduled programme.

4. It is averred in the writ petition that the election of one member of the Central Council of Homeopathy, New Delhi is to be held amongst the registered Homeopathic practitioners from the State of Rajasthan; the Ministry of Health and Welfare, Aayush Department, Government of India has appointed the Returning Officer. Initially, Notification dt. 25.06.2012 was issued declaring the process of election and its schedule. Being one of the contesting candidates, the petitioner has also submitted his nomination form for contesting the election. On due scrutiny of the nomination forms, notice No. 2012/11 dt. 12.07.2012 was

issued by which out of eleven nomination forms, eight had been rejected; for rejection of those nomination forms, reason as mentioned in the notice was that they were not properly filled by following the instructions. Subsequently, notice No. 2012/12 has been issued on the same date i.e. 12.07.2012 by which aforesaid eight forms have been declared valid; as such, they have been allowed to contest the election and the previous notice No. 2012/11 dt. 12.07.2012 has been cancelled on the same date. Some of the candidates had filed more than one nomination paper, however 11 nomination papers were submitted and out of the same, nominations of 5 were found to be valid in the subsequent notice No. 2012/12. Hence, the subsequent notice issued being violative of the provisions of Homeopathy Central Council (Election) Rules, 1975 (hereinafter referred to as "the Rules of 1975"), is liable to be quashed. It is further averred in the petition that Observer has to be appointed by the Central Council; objections were also raised by way of filing representation before the Returning Officer, which was not considered. Hence, the writ petition has been preferred. Interim order dt. 25.07.2012 was passed by Single Bench staying operation of the subsequent notice No. 2012/12 dt. 12.07.2012.

5. As a matter of fact, pursuant to notice No. 2012/12 dt. 12.07.2012 by which nominations of certain persons were accepted and earlier notice No. 2012/11 dt. 12.07.2012 was recalled, Gazette Notification dt. 25.07.2012 has been issued publishing the list of contesting candidates. Since the Single Bench has stayed operation of notice No. 2012/12 dt. 12.07.2012, despite Gazette Notification having been issued, election is to be held on the basis of notice No. 2012/11 dt. 12.07.2011 in which nominations of only three candidates were found to be valid. Thus, we are in a situation where election is to be held on the basis of notice No. 2012/11, whereas the same was recalled by the Returning Officer and fresh notice No. 2012/12 was issued on the same date.

6. The appellant being one of the contesting candidates whose names were published in the Gazette Notification dt. 25.07.2012, had filed IA Nos. 32436/2012 and 32438/2012 for impleadment as respondent in the writ application and for vacation of ex-parte interim order dt. 25.7.2012 respectively before the Single Bench; while the same were pending consideration, legality of order dt. 25.7.2012 staying operation of one of the notice No. 2012/12, not the entire election process, was questioned before this Court by way of filing special appeal No. 1006/2012 (Dr. Tara Prakash Yadav vs. Dr. Pankaj Sharma & Ors.). In view of the fact that the aforesaid applications were pending consideration before the Single Bench, this Court did not interfere with the impugned order. However, this Court requested the Single Bench to decide the applications at an early date. Thereafter on 30.07.2012 itself, the Single Bench has considered the applications; while considering the same, the Single Bench has allowed the impleadment of applicant/appellant only to the extent of intervenor, however, dismissed the application for vacation of ex-parte interim stay on the ground that intervenor cannot apply for vacation of interim stay. Hence, legality of the said order was questioned by way of filing the intra Court appeal.

7. Mr. Rajendra Soni, learned counsel appearing on behalf of the appellant has submitted that it is a case where entire election process has been interfered with by the impugned order of stay. Despite being directly affected in view of the fact that appellant's nomination was ultimately allowed by the Returning Officer by issuing notice No. 2012/12 dt. 12.07.2012, still the appellant has not been impleaded as respondent. Thus, the petition which has been filed by respondent No. 1 was liable to be dismissed on the ground of non-joinder of necessary parties. At the time of passing of the interim order staying operation of notice No. 2012/12, the fact that name of the appellant was published in the Gazette notification as contesting candidate was not brought to the notice of Single Bench. As such, he is unable to contest the election despite his name being published in the gazette notification. Now the election is being held by excluding the persons whose nominations were accepted vide the subsequent notice No. 2012/12. Holding of election on the basis of previous notice No. 2012/11 dt. 12.07.2012, validity of which is yet to be adjudged by the Single Bench, would have the effect of allowing the writ petition itself at interlocutory stage. In case election is held on the basis of previous notice by exclusion of certain persons, complications would arise and irreparable loss would be caused to the appellant as he is being deprived of contesting the election by the impugned order. The fact that the Rules of 1975 have been amended vide notification dt. 18.05.2012 has also not been brought to the notice of Single Bench while passing of the interim stay order. He has further submitted that in view of the amended Rule 27 of the Rules of 1975, there is power given to the Returning Officer or the Registrar to decide into the disputes raised during the election process i.e. from the date of receipt of nomination papers till the date of declaration of results and its proviso provides that the Central Government shall decide all such issues if referred to it within the time period specified in rule 25, irrespective of whether or not the same disputes raised before the Returning Officer or the Registrar has been decided or not. Thus, the impugned order is liable to be set aside or modified.

8. Mr. Sandeep Saxena, learned counsel appearing on behalf of respondent No. 1 has submitted that there was no gazette notification issued as on the date of filing of the writ application; it was not open to the Returning Officer to allow the candidature of certain candidates, once he has rejected the same vide notice No. 2012/11. However, he has issued fresh notice No. 2012/12 dt. 12.07.2012 in an illegal manner. Thus, the interim stay has rightly been passed by the Single Bench. As such, respondent No. 1 and other candidates were entitled to contest the election proposed to be held on 28.07.2012 on the basis of notice No. 2012/11. Hence, no case for interference is made out. However, he has stated that he is not opposing impleadment of the appellant as respondent in the writ application as he is the affected party.

9. Mr. S.N. Kumawat, Additional Advocate General appearing on behalf of respondents No. 3 to 5 has submitted that it is a case there is any stage, there should be stay on the entire election process; there should not be partial stay of

the process of election by staying operation of one of the notice No. 2012/12 candidature of three candidates is being excluded whereas in the gazette notification dt. 25.07.2012 names of five persons as contestants were published. Thus, this Court may either stay the entire election process and direct the hearing of writ application before the date of election so that election can be held in accordance with the final decision to be rendered in the writ application. Otherwise, in case election is held by inclusion of only two candidates, complications may arise.

10. Mr. S.S. Raghav, learned counsel appearing for respondent No. 2 has supported the stand of Mr. Kumawat.

11. After hearing learned counsel for the parties, we are of the opinion that in fact the persons in whose favour notice No. 2012/12 was issued accepting nominations, were required to be impleaded as respondents and heard in the writ application before any adverse order was passed as against their interests; impleadment of the appellant in the writ application was necessary for proper adjudication of the matter. Thus, when the appellant has filed application for impleadment before the Single Bench, same was required to be allowed in consonance with the principles of natural justice. Faced with the situation that the writ application was liable to be dismissed for non-joinder of necessary parties, counsel for respondent No. 1 has now stated before us that he is not objecting to the impleadment of appellant as respondent in the writ application. Whatever that may be, in the facts of present case, we find that IA No. 32436/2012 for impleadment of the appellant as respondent in the writ application deserves to be allowed; in view of rejection of application for impleadment, the application for vacation of interim stay order was rejected by Single Bench on technical ground. In our opinion, there should not be partial stay of the proceedings. However, interim stay has been granted reducing number of candidates who can contest election. Question is whether in view of amended Rule 27 of the Rules of 1975, the Returning Officer has power to issue the impugned notice No. 2012/ 12. In case election is held by inclusion of only two candidates as per notice No. 2012/11, it would complicate the issue; in the gazette notification, names of five contesting candidates were published for the election to be held for Central Homeopathy Council. Thus, the entire election process deserves to be stayed till the matter is heard and decided finally by the Single Bench. The election process has been started pursuant to passing of the interim stay order and now ballot papers which has been circulated contain names of only two candidates, we are faced with the situation that we cannot permit only two candidates to contest the election unless and until rights of other candidates in whose favour notice No. 2012/12 was issued, are not adjudicated finally; otherwise several complications may arise.

12. Thus, we stay the entire election process and request the Single Bench to decide the matter finally at an early date. Interim order dt. 25.07.2012 and order dt. 30.07.2012 passed by Single Bench are set aside.

13. Resultantly, the appeal is disposed of. IA No. 32436/2012 for impleadment and IA No. 32438/2012 for vacation/modification of the interim stay order are disposed of in terms of this order. Civil Misc. Stay Petition No. 10204/2012 is also disposed of. Office is directed to list the writ petition before the Single Bench on 21.08.2012.