

(2017) 11 DEL CK 0518

In the Delhi High Court

Case No : Civil Writ Petition No. 9982 Of 2017, Civil Miscellaneous No. 40716-40718, 40748 Of 2017

Dr. V. K. Prajapati

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

Dentist Act, 1948 — Section 3, 3(b), 3(c), 3(d), 3(e), 3(f), 6(1)

Citation : (2017) 11 DEL CK 0518

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Nidhesh Gupta, Rajesh Kumar, Dev P. Bhardwaj, Satya Prakash Singh, T. Singhdev, Michelle Biakthansangi Das, Tarun Verma, Puja Sarkar, Abhijit Chakravarty

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning the letter dated 24.10.2017 issued by the Dental Council of India (hereafter

â??DCIâ??). The petitioner also impugns the letter dated 23.10.2017 issued by respondent no.1 to the Secretary, DCI.

2. It is stated that respondent no.4 (Dr Vivek Kumar) was nominated as a Member of DCI under Section 3(e) of the Dentist Act, 1948 (hereafter

â??the Actâ??) by the State of Jharkhand (respondent no.3) vide notification dated 20.08.2014.

3. The petitioner claims that for certain reasons (which are not necessary to be taken note of in this order), respondent no.3 exercised its powers to

replace the petitioner with Dr Vivek Kumar as its nominee member of the DCI under Section 3(e) of the Act.

4. The principal question that falls for consideration by this Court is whether a notification by the Government of India is necessary for the petitioner to be appointed as a member of DCI. The petitioner also impugns an order dated 19.05.2015 passed by respondent no.1, which indicates that the Central Government has decided to notify in the Official Gazette election/nomination of all members of DCI as provided in various provisions under Section 3 of the Act.

5. It is the petitioner's case that the said notification is contrary to the provisions of the Act and the decision rendered by this Court in *Dr H. R. Prem Sachdeva and Others v. Union of India and Others*: 1995(3) AD (Delhi) 1061.

6. Aggrieved by the decision of respondent no. 3 in nominating the petitioner as a member of DCI in his place, Dr Vivek Kumar has preferred a writ

petition (being W.P.(S) 711/2016) before the Jharkhand High Court, inter alia, challenging the petitioner's nomination as a member of DCI. It is Dr

Vivek Kumar's case that the said decision of respondent no. 3 is violative of the principles of natural justice as it was without issuance of any prior

notice and without affording him an opportunity to be heard. The said petition was considered by the Jharkhand High Court on 19.03.2016 and the

Court passed an ad interim order, inter alia, directing that "status quo as on today shall be maintained."

7. In the aforesaid context, the controversy sought to be raised before this Court is that on the date of the said order, Dr Vivek Kumar was no longer

a member of the DCI and had been replaced by the petitioner. Thus, it is the petitioner's contention that the aforesaid order of status quo would not

protect Dr Vivek Kumar's position as member of DCI since he had already ceased to be one on respondent no. 3 nominating the petitioner in his

place.

8. Before proceeding further to address the aforesaid question it is necessary to refer to the provisions of Section 3 and Section 6(1) of the Act which

are set out below:-

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 recognised 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, byâ?

(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 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;

(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, â??Stateâ?? 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 recognised 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 registers and such

persons shall hold office for such period as the State or Central Government may, by notification in the Official Gazette, specify.

xxxx xxxx xxxx

6. Term of office and casual vacancies: -

(1) Subject to the provisions of this section an elected or nominated member

shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer:

[Provided that a member nominated under clause (e) or clause (f) of section 3, shall hold office during the pleasure of the authority nominating him.]

â??

9. A plain reading of Section 6(1) of the Act indicates that the member which is nominated under Clause (e) of Section 3 of the Act â?" that is the

member nominated by the State Government â?" would hold office during the pleasure of the authority nominating him (which in this case would be

the State of Jharkhand). The issue whether a notification by the Government was required for the nomination to take effect was considered by the

Division Bench of this Court in Dr H. R. Prem Sachdeva (supra) and the Court had held as under:-

â??..... We, therefore, hold that no Gazette notification is necessary under the Regulations for a person nominated/elected under the provisions of

clauses (b), (c), (d) and (d) of section 3 and that they could act as members immediately on their nomination/election. In the light of the aforesaid view

that we have taken the members who have been nominated under clauses (c), (d) and (e) of section 3 of the Act would continue to be members of

the Council even if in their case no notification is issued by the Central Government and published in the Gazette. In our view, in such cases a

notification by the council shall be sufficient.â??

10. The aforesaid decision was carried in appeal before the Supreme Court. However, the aforesaid decision was not interfered with.

11. The learned counsel for the petitioner submitted that in terms of the order dated 19.05.2015 passed by respondent no.1, it is now mandatory for the

Central Government to notify the name of the member nominated by the State Government on DCI for the same to take effect. The aforesaid

contention is unmerited as the plain language of Section 6(1) of the Act indicates that a person nominated by the State Government under Section 3(e)

of the Act would hold his office during the pleasure of the said authority. Thus, the moment a State Government takes a decision to remove the person

nominated by it and communicates the same, the nominated person would cease to be a member of the DCI. This is also the view unequivocally

expressed by the Division Bench of this Court in Dr H. R. Prem Sachdeva (supra).

12. At this stage, it is also relevant to refer to the order dated 19.05.2015 and the same is set out below:-

“In pursuance of the provisions contained in the Section 3 of the Dentists Act, 1948, the Central Government has decided to notify in the

Official Gazette election/nomination of all members of Dental Council of India (DCI) as provided in various provisions under Section 3 of the Act. The

Dental Council of India is, therefore, directed to take necessary steps in respect of notification by the Central Government of all existing members

whose nomination/election has not been notified in the Official Gazette as well as for all future vacancies in the Council accordingly.

This issues with the approval of competent authority.”

A plain reading of the above order indicates that the Central Government has decided to notify the election/nomination of members of DCI; however,

this does not mean that the nomination of members under Section 3(e) and/or 3(f) of the Act would take place only on the same being notified in the

Official Gazette. The said order cannot be read in a manner so as to conflict with the provisions of the Act.

13. As far as the import of the order dated 19.03.2016 passed by the Jharkhand High Court is concerned, this Court is refraining from expressing any

opinion on the same as it would be apposite for the parties to approach the Jharkhand High Court to seek the necessary clarifications.

14. The petition and all the pending applications are disposed of with the aforesaid observations.