

(2000) 12 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 538, 610, 624, 714, 888, 894, 911, 956, 958, 1107, 1212, 1273, 1321, 1322, 1403, 1476, 1477, 1483, 1512, 1623, 1634, 1637, 1692, 1694, 1696 and 1747 of 2000

Ganesh Das Majumdar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226

DENTISTS ACT, 1948 — Section 10, 21, 32, 33, 34

Citation : (2007) 3 WLN 301

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Judgement

R.R. Yadav, J.—Although, all these aforesaid 26 writ petitions are posted today, for admission but with the consent of the learned Counsel for the parties, I propose to decide these writ petitions on merit, at admission stage.

2. In the aforesaid writ petitions, common questions of law and fact are involved, therefore, all these writ petitions can be disposed of by a composite order. While deciding these writ petitions, by a composite order, SB Civil Writ Petition No. 624/2000 is treated as a leading case.

3. All these writ petitions have been filed, challenging the validity of the notification, dated 21.7.1999, Annexure-R/5 to the reply, whereby, the State Government, in exercise of its powers, conferred u/s 32 of the Dentists Act, 1948 (hereinafter referred as "the Act of 1948"), constituted Registration Tribunal, consisting of the persons, named therein, for entertaining applications for registration, accompanied by prescribed fee of Rs. 800/-, within a period of three months, from the date of publication of the aforesaid notification. All the petitioners also claim certain ancillary reliefs, depending upon the validity of the aforesaid -notification, Annexure-R/5 to the reply.

4. It is pertinent to mention here that vide notification dated 30.8.2000,

Annexure-R/6 to the reply, the State Government has withdrawn the notification dated 21.7.1999, Annexure-R/5. A mention is made on behalf of the State Government that since the notification, Annexure-R/5, dated 21.7.1999, has been withdrawn, therefore, the instant writ petitions have become infructuous. The aforesaid submission made on behalf of State Government by Mr. Narendra Jain is not acceptable to the learned Counsel for the petitioners which necessitated to decide these writ petitions on merits, at admission stage, taking into account the administrative exigency in this regard and laxity of State Government, not constituting State Dental Council within the meaning of Section 21 of Dentists Act, 1948, even after expiry of more than 51 years.

5. The learned Counsel for the petitioners, submitted that merely because, the notification dated 21.7.1999, Annexure-R/5, has been withdrawn by the State Government, the present writ petitions have not automatically become infructuous.

6. I have given my thoughtful consideration to the rival contentions, raised at the Bar. I am of the opinion that the learned Counsel for the petitioners are correct to make a submission that irrespective of the fact that the State Government has withdrawn the notification dated 21.7.1999, Annexure-R/5, by its subsequent notification dated 30.8.2000, Annexure-R/6, even then, the present writ petitions require to be decided on merits. Suffice it to say in this regard that Article- 226 is meant to advance justice between man and man; between man and citizen; and between citizen and State, and even if the petitioners are not entitled to get the reliefs, claimed by them, still, this Court, by moulding the reliefs, is under Constitutional obligation, to grant appropriate reliefs, to them for which they are found to be entitled. Looking into the insensitiveness of the State Government, not constituting State Dental Council, as envisaged u/s 21 of the Act of 1948, for a long period of about 51 years, under wrong notion, and in its place, constituting Registration Tribunal, from time to time, within the meaning of Section 32 of the Act of 1948, it becomes imperative for this Court, being constitutional functionary, to adjudicate the controversy finally between the petitioners and State, directing the State to maintain the supremacy of Rule of law in a democratic polity like ours by constituting a State Dental Council.

7. Before deciding the controversy involved in these writ petitions, I would like to give a synopsis of the relevant Sees, of the Act of 1948, which require interpretation by this Court. Under Sections 21 of the Act of 1948, the State of Rajasthan is mandated by Parliament to constitute a State Dental Council, consisting of four members, elected from among themselves, by dentists, registered in Part-A of State register; four members, elected from among themselves, by dentists, registered in Part-B of the State register; the heads of dental colleges, if any, in the State, who train students for any of the recognized dental qualifications, included in Part-I of the Schedule, ex officio; one member, elected from amongst themselves, by the members of the Medical Council of Medical Registration of the State, as the case may be; three members,

nominated by the State Government, and the Chief Medical Officer of the State, by whatever name called, *ex officio*.

8. It is to be imbibed that non-constitution of State Dental Council 4 by State Government is causing heart-burning to those dental surgeons, who do not hold a recognised dental qualification, but have been engaged in practice, as dentists as their principal means of livelihood, for a period of not less than five years, prior to the date, mentioned under Sub-section (2) of Section 32, or other categories of dentists, whose prime source of livelihood, is practice, as dentists. It is also to be remembered that the insensitivity of the State Government in not constituting a State Dental Council, is causing health hazards to the people of the State of Rajasthan and they are being deprived of getting assistance of qualified dentists under the Act of 1948.

9. Section 32 of the Act of 1948, provides that for the purposes of first preparing the register of dentists, the State Government shall, by notification in the Official Gazette, constitute a Registration Tribunal, consisting of three persons, and shall also appoint a Registrar, who shall act as Secretary of the Tribunal. The State Government shall, by the same, or a like notification, appoint a date, on or before which, application for registration, which shall be accompanied by the prescribed fee, shall be made to the Registration Tribunal. Under Sub-section (3) of Section 32 of the Act of 1948, it is envisaged that the Registration Tribunal shall examine every application received on or before the appointed date, and if it is satisfied that the applicant is qualified for registration Under Section-33, shall direct the entry of the name of the applicant, on the register, Sub-section (4) of Section 32, provides that the register so prepared, shall thereafter be published in such manner, as the State Government may direct, and any person, aggrieved by a decision of the Registration Tribunal, after its publication, may, within thirty days from the date of such publication, appeal to the authority, appointed by the State Government, in this behalf, by notification in the Official Gazette. Sub-section (5) of the aforesaid Section provides that the Registrar shall amend the register, in accordance with the decisions of the authority appointed under Sub-section (4) and shall thereupon, issue, to every person, whose name is entered on the register, a certificate of registration in the prescribed form.

10. Sub-section (6) of Section 32 of the Act of 1948 specifically provides that upon the constitution of the State Dental Council, the register prepared by Registration Tribunal, shall be given into its custody, and the State Government may direct that all or any specified part of the application fees for registration in the first register, shall be paid to the credit of the State Dental Council. It is not understandable, where the amount, received by the Registration Tribunal from the applicants, had been credited within the meaning of Sub-section (6) of Section 32 of the Act of 1948, because, it is conceded by the learned Counsel for the parties that State Government had not constituted a State Dental Council uptill date.

11. It is submitted by the learned Counsel appearing on behalf of respondents

No. 1 to 3 that State Register of Dentists prepared by Registration Tribunal constituted u/s 32 of the Act of 1948 vide notification dated 25th July, 1959, Annexure-R/1, are lying in possession and custody of Registration Tribunal, whereas, according to Sub-section (6) of Section 32 of the aforesaid Act, the Registration Tribunal was required to hand over the same to State Dental Council, required to be legally constituted u/s 21 of the aforesaid Act. The learned Counsel Mr. Jain, appearing on behalf of respondents Nos. 1 to 3, also invited my attention towards notification dated 23rd July, 1964, Annexure-R/3, whereby the State Government, in exercise of its power under Sub-section (4) of Section 32, published the register, so prepared by the Registration Tribunal constituted under Sub-section (1) of Section 32 of the Act of 1948 vide notification dated 25th July, 1959, Annexure-R/1, to the reply and by the same notification, Annexure-R/3 to the reply appointed the Director of Medical and Health Services, Rajasthan, as the authority to hear appeals in this behalf from any person aggrieved by a decision of the Registration Tribunal, expressed or implied in the register, so prepared by it.

12. For effective decision on the controversy involved in the present writ petitions, the relevant provisions of Section 34 of the Act of 1948, are also required to be quoted, for ready reference, which read thus:

34. Qualification for subsequent registration,--(1) After the date appointed under Sub-section (2) of Section 32 a person shall, on payment of the prescribed fee, be entitled to have his name entered on the register of dentists, if he resides or carries on the profession of dentistry in the (State) and if he-

(1) holds a recognised dental qualification, or

(ii) does not hold such a qualification but, being a (citizen of India), has been engaged in practice as a dentist as his principal means of livelihood for a period of not less than (two years before the date appointed under Sub-section (2) of Section 32) and has passed, within a period of (ten years after the said date), an examination recognised for this purpose by the (Central Government):

Provided that no person other than a (citizen of India) shall be entitled to registration by virtue of a qualification:

(a) specified in Part I of the Schedule unless by the law and practice of the State or country to which such person belongs persons of Indian origin holding dental qualifications registrable in that State or country are permitted to enter and practise the profession of dentistry in such State or country, or

(b) recognised in pursuance of a scheme of reciprocity, under Sub-section (5) of Section 10:

Provided further that a person registered in Part B of the register shall be entitled to be registered in Part A thereof, if within a period of [ten years after the date of his registration in Part B] he passed an examination recognized for the purpose by the (Central Government).

(2) Notwithstanding anything contained in Sub-section (1),--(a) a State Council may during the period of two years immediately after the commencement of the Dentists (Amendment) Act, 1955, permit for sufficient reasons the registration in the State register of any displaced person, who does not hold a recognised dental qualification but has been actually practising the profession of dentistry as his principal means of livelihood from a date prior to the 29th day of March, 1948.

13. It is contended by the learned Counsel for the petitioners that once the notification dated 21.7.1999, Annexure-5, was issued by the State Government, constituting Tribunal, inviting applications, within a period of 30 days, from the date of publication of aforesaid notification, the State Government is not legally authorized to withdraw the aforesaid notification. According to the learned Counsel for the petitioners, all those persons, who did not possess recognised dental qualifications, but they are practising as dentists for 20-30 years or more than that, cannot be divested of their right, to practise as dentists, which is main source of their livelihood, whereas, it is submitted by Shri Narendra Jain, the learned Counsel, appearing for the answering respondents, that the aforesaid notification was issued by the State Government, in exercise of its power conferred u/s 32 of the Act of 1948, therefore, the State Government has power to amend or vary or rescind the said notification, issued under any Central Act or Regulations. In support of his aforesaid submission, he invited my attention to Section 21 of the General Clauses Act, 1897 (hereinafter referred as "the Act of 1897").

14.1 have given my thoughtful consideration, to the rival contentions, raised at the Bar. I am of the view that there is substance in the submission, made by Shri Narendra Jain. As a matter of fact, the State Government, which had issued the notification dated 21.7.1999. Annexure-R/5, is empowered to withdraw the same, within the meaning of Section-21 of the Act of 1897 and an argument, contrary to it, is not acceptable.

15. It is evident from perusal of the materials, available on record that in pursuant to the mandatory provisions, contemplated Under Section-32 of the Act of 1948, the State Government had constituted a Registration Tribunal, vide Annexure-R/1, on 25.7.1959, consisting of Dr. R.M. Kasliwal, Principal, SMS Medical College and Controller to the attached hospitals, Jaipur; Dr. G.D. Baijal, Deputy Director of Medical & Health Services (Administration), Rajasthan, Jaipur; Dr. Satya Deo Sharma, Junior Specialist (Dentists) SMS Hospital; Jaipur; and Shri H.L. Bordia, as a part-time Registrar of the said Tribunal. Shri H.L. Bordia was also directed to act as the Secretary and Treasurer of the Registration Tribunal. It is held that constitution of the Registration Tribunal, consisting of the aforesaid three members and Shri H.L. Bordia as its Registrar/Secretary/Treasurer, is validly constituted u/s 32 of the Act of 1948. It is pertinent to mention here that under Sub-section (2) of Section 32 of the Act of 1948, the State Government was required by the same notification, or a like notification, appointing a date on or before which, applications for registration are to be made

accompanied by the prescribed fee, to the Registration Tribunal. From the notification dated 25.7.1959, Annexure-R/1, it is crystal clear that in exercise of power under Sub-section (2) of Section 32, the State Government directed the Registration Tribunal, to receive applications, within three months, from the date of publication of the notification, i.e., Annexure-R/1 dated 25.7.1959, if such applications are accompanied by the prescribed fee of Rs. 15/-. In exercise of power under Sub-section (3) of Section 32, the Registration Tribunal, constituted by the State Government Under Section-32, vide notification dated 25.7.1959, Annexure-R/1, was to examine every application received on or before the appointed date and on its satisfaction that the applicant is qualified for registration under Section-33, was to direct an entry of the name of the applicant, either in Part-A, or Part-B of the register, as the case may be.

16. A close scrutiny of the Section 33 of the Act of 1948, reveals that the Registration Tribunal, which was constituted by State Government, vide Annexure-R/1, on 25.7.1999, was required to prepare a register, in Part-A and Part-B. Those candidates, who possess recognised dental qualifications, such persons' names were to be registered in Part-A register; and those, who do not possess recognised dental qualifications, but fulfil other conditions, enumerated under the aforesaid section their names were to be entered in Part-B register. It is revealed from perusal of Sub-section (4) of Section 32 that the register so prepared, by Registration Tribunal, was to be published in such a manner, as the State Government may direct and any person, aggrieved by a decision of the Registration Tribunal, was to file an appeal to the authority, appointed by the State Government, in this behalf, by notification in Official Gazette, within thirty days from the date of publication of the names of the applicants.

17. It is borne out from the perusal of Annexure-R/3 to the reply that the State Government, in exercise of its power, conferred by Sub-section (4) of Section-32 of the Act of 1948, caused the register prepared by the Registration Tribunal, published on 23.7.1964 and by the same notification, Director, Medical & Health Services, Rajasthan, was appointed as the authority, to hear appeals from any person, aggrieved by the decision of the Registration Tribunal, expressed or implied in the register so prepared, either in Part-A or in Part-B. The appointment of Director of Medical & Health Services, Rajasthan, as the appellate authority, is not disputed before me. The petitioners in these petitions are not claiming that they are not satisfied with the entries made by the Registration Tribunal, either in Part-A register, or in Part-B register. The petitioners have not filed these petitions, claiming that they have preferred appeals before the Director, Medical & Health Services, Rajasthan and after their appeal being allowed, their names are not included in the list, in pursuant thereof, as envisaged under Sub-section (5) of Section 32 of the Act of 1948.

18. The aforesaid discussion leads towards an irresistible conclusion that there was an outer limit, prescribed by the State Government, to make applications by all those dentists, who possessed recognised dental qualifications, or who did not

possess a recognised dental qualifications, for inclusion of their names either in Part-A or Part-B register, and once they failed to avail that opportunity either by moving applications to the Registration Tribunal, within the appointed date or by filing an appeal, they are not entitled to come before this Court and make a grievance that they are entitled to practise and their names should be included either in Part-A, or Part-B register, subject to subsequent inclusion of names in the Register so prepared by Registration Tribunal by State Dental Council within the meaning of Section 34 of the Act of 1948.

19. Coming to the next question relating to constitution of State Dental Council, by State Government, it is worthy to take note of Sub-section (6) of Section 32 of the Act of 1948, which provides that upon constitution of a State Dental Council, the register so prepared by the Registration Tribunal, shall be given to its custody, which further suggests that constitution of Registration Tribunal, for the purpose of first preparation of the register of dentists, u/s 32 of the Act of 1948, by notification, was a time-gap arrangement, before creation of an elected State Dental Council, as envisaged u/s 21 of the said Act, on the basis of first register, prepared by Registration Tribunal. I have no hesitation to hold that the creation of the Registration Tribunal, was a time-gap arrangement, before constitution of an elected State Dental Council on the basis of first register, prepared by Registration Tribunal. I am of the view that after creation of an elected State Dental Council, on the basis of first register, prepared by Registration Tribunal, created under Sub-section (1) of Section 32 of the Act of 1948, it outlived its utility.

20. It seems that under wrong legal notion, the State Government has created Registration Tribunal, by impugned notification dated 21.7.1999, Annexure-R/5 to the reply to the writ petition, and it further appears that when the mistake was realised by the State Government, then, by subsequent notification dated 30.8.2000, Annexure-R/6, it has withdrawn the earlier notification, Annexure-R/5.

21. It is strenuously contended by some of the learned Counsel, appearing for the petitioners, that the Registration Tribunal had not received all the applications of the applicants and the first register, prepared by the Registration Tribunal, constituted by the State Government under Sub-section (1) of Section 32 of the Act of 1948, had not prepared a correct register in Part-A and Part-B. Suffice it to say in this regard that disputed questions of fact cannot be gone into under Article 226 of the Constitution, after a long interval of more than 36 years, specially when the aggrieved dentists were entitled to file appeals before statutory appellate authority, within thirty days from the date of publication of the first register, prepared by Registration Tribunal. In these cases, it does without saying that first register, prepared by Registration Tribunal, created by State Government, by notification dated 27.7.1959, Annexure-R/1, was published on 23.7.1964, Annexure-R/3, appointing, by the same notification, Director of Medical & Health Services, Rajasthan, as the authority, to hear appeal in this behalf, from any person aggrieved by a decision of the Registration

Tribunal, in first register so prepared.

22. Lastly, It is submitted that practising dentists' profession by the petitioners, is only source of their livelihood. It is submitted that refusal to register their names in Part-B register, tantamount to depriving them of their source of livelihood, which falls within the sweep of Article 21 of the Constitution. It is held that if an interest of an individual or group of dentists are pitted against the public interest touching health hazards of public at large, then, the interest of public is to be preferred, not the interest of group of dentists, who do not possess recognised dental qualification but claiming their entitlement to practice dentistry on the basis of length of their practice dentistry as their profession. Society is entitled to get dental health services from qualified dentists, under the Act of 1948, which cannot be sanctioned as suggested by the learned Counsel for the petitioners.

23. It is also submitted by the learned Counsel for the petitioners, with emphasis that the petitioners are practising dentistry profession for a very long period and they have got long experience, therefore, they are entitled to be registered in Part-B register, even if they do not hold recognised dental qualifications. The aforesaid argument is not acceptable for the simple reason that unless, the petitioners acquire qualifications under the Act of 1948, they are not entitled to be registered, illegally, by Registration Tribunal, created by State Government, vide notification dated 21.5.1999, Annexure-R/5 to the reply, which has already been withdrawn by State Government, vide notification dated 30.8.2000, Annexure-R/6.

24. It is brought to my notice that in pursuant to the notification dated 21.7.1999, Annexure-R/5 to the reply, some of the petitioners have deposited Rs. 800, as fee, under the interim orders of this Court. The said petitioners are entitled to refund of the aforesaid amount. The respondent 1 O.2 is hereby directed to refund the aforesaid amount, within three months from today, to the petitioners, which was deposited with the Registrar, Registration Tribunal, on the basis of ad interim stay order.

25. The act of State Government in not constituting a State Dental Council, for about 51 years, as contemplated u/s 21 of the Act of 1948, is demurrable, therefore, it deserves to be mandated to constitute it, within one year from today.

26. Upshot of the aforesaid discussion, is that these writ petitions are partly allowed with a direction to the State Government, to constitute a State Dental Council, for State of Rajasthan, within a period of one year from today, to redress the grievances of the petitioners, under the Act of 1948, in accordance with law. The Registrar, Registration Tribunal, is directed to refund Rs. 800/- fee, deposited by some of the petitioners, on the basis of ad interim order within three months from today.