

(1972) 10 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 305 of 1971

Mahesh Chandra Satpathy and Others APPELLANT
Vs
State of Orissa and Others RESPONDENT

Date of Decision : 11-10-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 114
Orissa Homeopathic Act, 1956 — Section 21, 27, 27(1), 27(2)

Citation : (1972) 38 CLT 1209

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : C.V. Murty, for the Appellant; Government Advocate and S. Kundu, for the Respondent

Judgement

K.B. Panda, J.—In this application under Articles 226 and 227 of the Constitution the five Petitioners seek to quash the election to the office of the Orissa State Board of Homeopathic Medicine (hereinafter, referred to as the Board) conducted in accordance with the notification (Annexure-1).

2. According to the Orissa Homeopathic Act; 1956 (hereinafter referred to as the Act) the Board has to be constituted His per Chapter II which shall consists of thirteen members including the President to be called as Orissa State Board of Homeopathic Medicine. The President is to be nominated by the State Government. Two members are to be elected by the Orissa Legislative Assembly from amongst its members in the prescribed manner and there would be ten homeopathic practitioners practising in the State of Orissa to be elected in the prescribed manner It is alleged in the petition that the present members of the Board have come to office under Annexure-1 and many illegalities have been committed in their election which have been mentioned in the petition. But since Mr. Murty, appearing on behalf of the Petitioners, confines to non-compliance with the provisions of Section 27 of the Act, we propose to concentrate on that only.

Admittedly the previous Board had ceased to exist with effect from 27-10-1970 by virtue of judgment delivered by this Court in O.J.C. 62 of 1968 on the same day that is, 27-10-1970, wherein it was declared that the members elected to the then Board, ten in members, were not validly elected. As it appears, that necessitated a fresh election to and constitution of a new Board.

3. For the purpose of election to the Board correct up-to-date voters list has to be prepared in accordance with the, provisions of Section 27 of the Act, the relevant portions of which are extracted below:

27.. Publication of names entered in the register:

The Registrar shall, in every year from time to time, as occasion may require, on or before a date to be fixed in this behalf by the Board, publish in the Gazette And in such other manner as the Board may direct, a correct list of Dames for the time being entered in the register and setting forth.

(8) all names entered in the register arranged in alphabetical order;

(b) the registered address or appointment of each person whose name is entered in the register;

(c) the registered titles and qualifications of each such person And the date on which each such title was granted or each such qualification was certified.

(2) In every year in which such Hat has not been published, the Registrar shall cause to be printed and published, on or before the date fixed as aforesaid, a supplementary list setting forth

(a) the particulars specified in Clause (a) to (c) of Sub-section (1), the manner therein laid down in regard to the person whose names have been entered in, the register during the year to which such supplementary list appertains; and

(b) the names of persons whose names have been removed from the register under any of the provisions of this Act during the said year.

(3) In any proceeding, it shall be presumed that every person entered in such list is either a registered Homeopathic practitioner or a listed Homeopathic practitioner as the case may be, and that any person so entered is not a registered Homeopathic practitioner, or a listed Homeopathic practitioner;

4. According to the definition of the Act, the word "register" means a register of Homeopathic practitioners prepared and maintained under this Act and "registered Homeopathic Practitioners" means a Homeopathic practitioners registered as such u/s 21 of the Act.

5. The purpose of Section 27 of the Act is to keep an upto date list of registered Homeopathic practitioners and the same is to be published by the date fixed by the Board. If it is not so done, the Registrar shall cause to be printed and published a supplementary list as per provisions of Section 27(2) of the Act.

6. The sole point for consideration is if such a list of Homeopathic practitioners had been maintained and the same had been published before the due date of election to the Board. The grievance of the Petitioners is that when such an upto date list is not prepared, any such practitioners competent to vote will not get a chance to take part in the election and will also not get a chance to challenge the incompetency of anybody who is not fit to be elected as a member of the Board.

7. There are 14 opposite parties out of whom opposite parties 1 to 4 are officials, namely, (i) State of Orissa, represented by the Secretary, Government of Orissa, Health Department, (ii) President of Board, (iii) Secretary-cum-Registrar of the Board and (iv) Returning Officer of the Board, and have filed a common counter. Their stand, so far as this aspect of the case is concerned, is that the approval of the Board to publish the list of the listed and registered Homeopathic practitioners was taken in the Board's meeting held on 26.8.1970 and the same was published in the Orissa Gazette dated 8-1-1971 strictly according to Section 27 of the Act which included the list of all the Homeopathic practitioners who are registered and listed under the Board by the end of December 1970; that after publication some printing mistakes were found to have crept in which were duly corrected by the office; that the Act does not contemplate for making provision in the list published u/s 27 of the voter list or electoral roll for the purpose of electing members of the Board and thus there is no question of exclusion of any eligible voters who could have either voted or contested the election.

Opposite parties 7 and 10 filed a joint counter stating that it is untrue to say that the electoral roll had not been revised according to the Act and the rules framed there under and that proper and correct enumeration had not been made as contemplated under the law.

8. The learned Government Advocate, appearing on behalf of opposite parties 1 to 4, initially referred to Annexure-1 as the notification contemplated u/s 27 of the Act. But when it was pointed out that it was only a notice of election made under Rule (5), he took time to produce the relevant notification fixing the date by the Board for publication in the Gazette a correct list of names entered in the register as per provisions of Section 27(1) of the Act, and the case was adjourned from 18-9-1972 to 26-9-1972. On that day also he did not file the required notification and took time for which the case had to be -adjourned to 4-10-1972 when too he was not equipped with the notification in question and so prayed for further time. But since on two previous occasions time had been granted, the prayer was rejected.

9. We are told that an officer of the Government happens to be the Secretary-cum-Registrar of the Board. If so, his callousness to respond to the request of the learned Government Advocate Inevitably leads us to the presumption contemplated u/s 114(g) of the Indian Evidence Act that either there is no such notification or, if it be produced, It would be going against their interest and so withheld.

10. The provisions of Section 27 of the Act are undoubtedly mandatory as well as salutary and non-observance of the conditions thereof would render any Board coming to office illegal and thus null and void. In the result, the petition is allowed. Let a writ of certiorari be issued quashing the constitution of the present Board. In the circumstances, there would be no order as to costs. We direct that steps be taken in accordance with law to hold the election.

R.N. Misra, J.

11. I agree.