

(2008) 11 PAT CK 0079
In the Patna High Court
Case No : LPA No. 167 of 2007

Returning Officer-cum-Principal, Homeopathy Central Council
Election, R.B.T.S. Govt. Homeopathic Medical College and
Hospital, Muzaffarpur, P.S.-Sadar, District -Muzaffarpur

APPELLANT

Vs

Munshi Prasad and Others

RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

Homoeopathy Central Council Act, 1973 — Section 3

Citation : (2009) 1 PLJR 827

Hon'ble Judges : R.M. Lodha, C.J;Kishore K. Mandal, J

Bench : Division Bench

Advocate : Rajeev Roy and Amrendra Kumar Sinha No. 1, Rajendra Prasad Singh and Rajani Kant Pathak, for the Appellant; Amresh Kumar Sinha for the State and Pravin Kumar Sinha for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

1. We heard the senior counsel for the appellant and Mr. Amrendra Kumar Sinha No. 1, counsel for the intervenors in I.A. No. 1405/2007. The respondent No. 1 has not chosen to appear despite service. Dr. Munshi Prasad is enrolled on a State Register of Homoeopathy of Bihar. He challenged the election notice issued by the Returning Officer, Central Council of Homoeopathy (Election) which was published in daily newspaper "Dainik Jagran" in its edition of 7th November, 2006 by which election schedule was published for holding the election of three members for the Central Council of Homoeopathy from the State of Bihar, (the territory being that of erstwhile Bihar prior to its reorganization). Inter alia, he set up the ground that voter list has not been revised and updated. In the writ petition, he alleged that he made representation to the concerned authorities raising diverse deficiencies in the electoral list; similar representations were also made by few others, but without looking into those deficiencies, the election to the Central Council of Homoeopathy has been notified by the Returning Officer. The petitioner also raised the plea that State of Jharkhand having come into

existence with effect from 15.11.2000, a Returning Officer of Bihar cannot hold election of Bihar and Jharkhand jointly.

2. The Returning Officer, who was impleaded as respondent No. 6 (present appellant) filed counter affidavit in opposition to the writ petition on 3rd January, 2007. He stated in the counter affidavit that the Government of India in its order dated 5th October, 2006 has clarified that since after creation of the State of Jharkhand, no separate register of Homoeopathic practitioners has been published in the State of Jharkhand, nor the register of the practitioners in the erstwhile State of Bihar has been bifurcated nor separately maintained, the election to the Central Council of Homoeopathy be conducted for the States of Bihar and Jharkhand. He emphasised that the procedures prescribed in the Homoeopathy Central Act, 1973 (for short, "the Central Act"), the Bihar Development of Homoeopathic System of Medicine Act, 1953 (for short, "the State Act") and the Homoeopathy Central Council Election Rules, 1975 (for short, "the Central Election Rules") have been followed and election notice has been issued in conformity with these statutory provisions.

3. The Single Judge noticed the diverse provisions of the State Act, and the Central Election Rules and held that up-to date electoral list having not been prepared, the proper election was not possible. According to the Single Judge, although the date of electoral list is mentioned as 30th June, 2006, but the said list, has been prepared much before the bifurcation of the State of Bihar and only some names have been added and based on that the electoral list cannot be said to be proper. He, accordingly, quashed and set aside the election notice dated 7th November, 2006 and all subsequent processes in respect to the concerned election. The Single Judge directed the Registrar, Bihar State Homoeopathic Medicine Board to prepare the register in accordance with the provisions of law and on that basis publish a fresh electoral roll and only thereafter elections should be held. It is this order passed by the Single Judge on 5th January, 2007 Reported in this Issue at Pg. 840 [2009(1) PLJR 840], that is impugned in the present Letters Patent Appeal.

4. The Constitution of Central Council is provided in Section 3 of the Central Act. It reads thus:-

"3.(1) The Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act a Central Council consisting of the following members, namely:-

(a) such number of members not exceeding five as may be determined by the Central Government in accordance with the provisions of the First Schedule from each State in which a State Register of Homoeopathy is maintained, to be elected from amongst themselves by person enrolled on that register as practitioners of Homoeopathy;

(b) one member from each University to be elected from amongst themselves by the members of the Faculty or Department (by whatever name called) of

Homoeopathy of that University:

Provided that until any such Faculty or Department of Homoeopathy is started in at least seven Universities, the Central Government may nominate such number of members not exceeding seven as may be determined by the Central Government from amongst the teaching staff of medical institutions within India, so however, that the total number of members so nominated and elected under this clause shall in no case exceed seven;

(c) such number of members, not exceeding forty percent of the total number of members elected under clause (a) and (b), as may be nominated by the Central Government, from amongst persons having special knowledge or practical experience in respect of Homoeopathy or other related disciplines:

Provided that until members are elected under clause (a) or clause (b) in accordance with the provisions of this Act and the rules made thereunder, the Central Government shall nominate such number of members, being persons qualified to be chosen as such under the said clause (a) or clause (b), as the case may be, as that Government thinks fit; and references to elected members in this Act shall be construed as including references to members so nominated.

(2) The President and the Vice-President of the Central Council shall be elected by the members of the Central Council from amongst themselves in such manner as may be prescribed:

Provided that for two years from the first constitution of the Central Council, the President and the Vice-President shall be nominated by the Central Government from amongst the members of the Central Council and the President and the Vice-President so nominated shall, notwithstanding anything contained in sub-section (1) of Section 7, hold office during the pleasure of the Central Government."

5. Section 4 of the Central Act provides for mode of election of the members of the Central Council. It reads thus:--

"4. (1) An election under clause (a) or clause (b) of sub-section (1) of Section 3 shall be conducted by the Central Government in accordance with such rules as may be made by it in this behalf.

(2) Where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final."

6. That the Principal, R.B.T.S. Govt. Homoeopathic Medical College and Hospital, Muzaffarpur has been nominated by the Central Government as Returning Officer for holding election of the members to the Central Council of Homoeopathy from the State of Bihar is not in dispute.

7. Rule 3 of Central Election Rules provides for the persons who are entitled to vote for such election. It reads thus:-

"3. Persons entitled to vote.-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-section (1) of Section 3."

8. Rule 4 of these Rules provides for posting of copies of State Register of Homoeopathy and also for updating these registers. Rule 4 is as follows: -

"4. Posting of copies of State Register of Homoeopathy.-(1) Copies of the State Register of Homoeopathy shall be posted at the office of the Returning Officer and of the Board of the State concerned.

(2) The register shall be brought up-to-date before posting and for this purpose, the Returning Officer shall give one month's notice to the Registrar (by whatever name called) of the Board concerned, who maintains the register in the State."

9. Returning Officer has been empowered to hold election which is embodied in Rule 5 and it reads thus:-

"5. Returning Officer to hold the elections.-The Returning Officer shall call upon persons enrolled on the State Register of Homoeopathy to elect such number of members, as is determined by the Central Government under clause (a) of sub-section (1) of Section 3."

10. Rule 6 provides for determination of questions relating to right to persons to stand for or to vote at that election. The said provision is as follows:-

"6. Questions relating to right to persons to stand for or to vote at election-If any question arises as to whether a person is or is not entitled to vote in the election or to stand for the election, the question shall be referred to the Returning Officer who shall decide the same."

11. Rules 7 to 21 provide for the entire procedure; right from fixation of date of election until the result of election. Rules 7 to 21 read thus:-

7. Fixation of dates of various stages of election.-The Returning Officer shall appoint and shall notify in the official Gazette and in such other manner as he thinks fit, the date, time and place for-

(a) the receipt of the nomination papers and their scrutiny;

(b) the dispatch of voting papers to the electors;

(c) the poll; and

(d) the scrutiny and counting of votes.

8. Nomination of candidates.-Any person qualified to stand for the election u/s 5 may be nominated as a candidate for election and such nomination shall be made by means of a nomination paper in Form 1 which shall be supplied by the Returning Officer to any elector who may apply for the same.

9. Nomination paper, -(1) Each nomination paper shall be subscribed by two

electors as proposer and seconder and shall contain a declaration signed by the person proposed signifying his consent to stand for the election.

(1A) No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at the same election and, if he does, his signature shall be inoperative on any paper other than the one first delivered.

(1B) Nothing in this rule shall prevent any candidate from being nominated by more than one nomination paper for the same election;

Provided that not more than four nomination paper shall be presented by or on behalf of any candidate or accepted by the Returning Officer.

(2) On receipt of each nomination paper, the Returning Officer shall forthwith endorse thereupon the date and hour of receipt.

10. Rejection of nomination paper.-A nomination paper which is not received before the date and time appointed in that behalf shall be rejected.

11. Scrutiny of nomination papers.-(1) On the date and at the time appointed by the Returning Officer for the scrutiny of the nomination papers, the candidates and the proposer and the seconder of each candidate may attend the office of the Returning Officer, who shall allow them to examination the nomination papers of all the candidates which have been received by him as aforesaid.

(2) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

(a) that on the date appointed for the scrutiny of nominations, the candidate does not possess a recognized medical qualification for standing election as such a candidate;

(b) that he is not enrolled on the State Register of Homoeopathy and does not reside in the State from which he stands for election;

(c) omitted,

(d) that the nomination paper is not received by the Returning Officer before the appointed time and date;

(e) that the signatures of the candidate or the proposer or the seconder on the nomination paper is not genuine;

(f) that the proposer or the seconder is not entitled to vote at such an election;

(g) that the signature of the proposer or the seconder is in violation to the provisions of the sub-rule (1A) of Rule 9.

12. Withdrawal of candidature.- (1) Any candidate may withdraw his candidature within seven days after the scrutiny of nomination papers by notice in writing

signed by him and delivered to the Returning Officer.

(2) A candidate who has withdrawn his candidature shall not be allowed to cancel the withdrawal.

(3) The Returning Officer, shall, on receiving a notice of withdrawal and on being satisfied as to the genuineness of the notice of withdrawal under sub-rule (1), cause the notice to be affixed in some conspicuous place in his office.

13. Poll- (1) Where the number of candidates duly nominated is equal to or less than the number of members to be elected from the State concerned, the Returning Officer shall forth declare such candidates to be duly elected.

(2) Where the number of such candidates is less than the number of members to be so elected the Returning Officer shall commence fresh proceedings for the election of the remaining members to be elected under clause (a) of sub-section (1) of Section 3.

(3) Where the number of such candidates exceeds the number of members to be elected from the State concerned, the Returning Officer shall publish their names and addresses in the official Gazette and shall further cause their names to be entered in the voting papers in Form-II.

(4) If a poll is found necessary, the Returning Officer shall, thirty days before the date appointed therefor, send by (registered) post to each elector a letter of intimation in Form-IV together with a numbered declaration paper in Form-III, a voting paper in Form-II containing the names of the candidates in a alphabetical order and bearing the Returning Officer's initial or facsimile signature, a voting paper cover addressed to him (the Returning Officer) and an outer envelope also addressed to him:

Provided that the voting paper and other connected papers may also be sent to any elector on his applying to the Returning Officer for the same before the date appointed for the poll, if the Returning Officer is satisfied that the papers have not been sent to him.

(5) An elector who has not received the voting and other connected papers sent to him by post or who has lost them or in whose case the papers before their return to the Returning Officer have been inadvertently spoilt, may transmit a declaration to that effect signed by himself, and request the Returning Officer not later than seven days before the date appointed for the poll to send him fresh - papers and if the papers have been spoilt, the spoilt papers shall be returned to the Returning Officer who shall cancel them on receipt.

(6) In every case in which fresh papers are issued, a mark shall be placed against the number relating to the elector's name in a copy of the State Register of Homoeopathy to denote that fresh papers have been issued.

(7) Each elector shall have as many votes as there are members to be elected from that State, but shall give only one vote to any one candidate.

(8) No election shall be invalid by reason of the non-receipt by an elector of his voting paper.

14. Return of voting papers.-Every elector desirous of recording his vote shall, after filling up the declaration paper and the voting paper according to the directions given in the letter of intimation, enclose the voting paper in the voting paper cover, stick up the cover, enclose the cover and the declaration paper in the outer cover addressed to the Returning Officer and send the outer cover by post at the elector's own cost to the Returning Officer or deliver it in person in the office of the Returning Officer so as to reach him not later than 5.00 P.M. on the date fixed for the poll and all envelopes received after that day and hour shall be rejected.

15. Endorsement by Returning Officer.-On receipt of the envelopes containing the declaration paper and the closed cover containing the voting paper, the Returning Officer shall endorse on the outer envelope the date and hour of receipt.

16. Presence of candidates at the time of opening of outer envelope.-(1) The Returning Officer shall open the outer envelope immediately after 5.00 P.M. on the date fixed for the poll at the place to which the envelopes are addressed to him.

(2) Any candidate may be present in person or may send a representative duly authorized by him in writing to attend at the time the outer envelopes are opened.

17. Rejection of voting papers-(1) A voting paper cover shall be rejected by the Returning Officer, if:-

(a) the outer envelope contains no declaration paper outside the voting paper cover; or

(b) the declaration paper is not the one sent by the Returning Officer to the voter; or

(c) the declaration paper is not signed by the elector; or

(d) the voting paper is placed outside the voting paper cover; or

(e) more than one declaration paper or voting paper cover have been enclosed in one and the same outer envelope; or

(f) the State Registration number is not given by the elector in the declaration paper.

(2) In each case of rejection the word "Rejected" shall be endorsed on the voting paper cover and also on the declaration paper, if any.

(3) After satisfying himself that the electors have affixed their signature to the declaration papers, the Returning Officer shall keep all the declaration papers in safe custody, pending disposal, under Rule 20.

18. Scrutiny and counting of votes.-(1) The Returning Officer shall attend for the purpose of scrutiny and counting of the votes on the date and at the time and place appointed by him in this behalf:

Provided the date so appointed shall not be later than three days from the date fixed for the poll.

(2) All the voting paper covers, other than those rejected under Rule 17 shall be opened and the voting papers taken out and mixed together and voting paper shall then be scrutinized and the valid votes counted.

(3) A voting paper shall be invalid if:-

(a) it does not bear the Returning Officer's initials or facsimile signature; or

(b) the voter signs his name or writes any word or makes any mark on it, by which it becomes recognizable as his voting paper; or

(c) no vote is recorded thereon; or

(d) the number of votes recorded thereon exceeds the number of seats to be filled; or

(e) there is uncertainty of the vote exercised.

(4) Any candidate may be present in person or may send a representative duly authorized by him in writing to watch the process of counting.

(5) The Returning Officer shall show the voting papers, if requested to do so, to the candidate or their authorized representatives at the time of scrutiny and counting of votes.

(6) If any objection is made to any voting paper on the ground that it does not comply with the specified requirements or to any rejection by the Returning Officer of a voting paper, it shall be decided at once by the Returning Officer.

(7) The Returning Officer shall nominate such number of scrutineers as he thinks fit who shall be Gazetted Officers of the Government.

19. Declaration of results.-(1) When the counting of the votes has been completed, the Returning Officer shall draw up a list of candidates in the order of highest votes polled by each candidate and shall declare candidates successful in that order according to the number of seats to be filled up and shall forthwith inform the successful candidates by post in such other manner as he thinks fit, of being elected to the Central Council.

(2) If, after the counting of the votes is completed, an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot and proceed as if the candidate on whom the lot falls had received an additional vote.

20. Sealing and custody of election papers.-Upon the completion of the counting and after the result has been declared by htm, the Returning Officer shall seal up the voting papers and all other documents relating to the election and shall retain the same for a period of six months and he shall not destroy or cause to be destroyed the records even after six months without the previous concurrence of the Central Government.

21. Result of election.-The Returning Officer shall intimate the name of the persons so elected to the Central Government who shall take steps to publish the names of the elected persons in the official Gazette."

12. Since the controversy relates to the preparation of electoral roll, in our view, Rule 3 and Rule 6 are very important. All persons whose names are enrolled on a State Register of Homoeopathy are entitled to vote at the election of members under Clause (a) of sub-section (1) of Section 3. We are concerned with the election of members under Clause (a) of sub-section (1) of Section 3. It is, thus, seen that persons whose names are enrolled on a State Register of Homoeopathy constitute the voters for the election of members under Clause (a) of sub-section (1) of Section 3. The provisions relating to State Register of Homoeopathy are contained in the State Act. Section 22 thereof provides for registration which is as follows:

"22. Registration.-(1) Every person who passes a qualifying examination u/s 31 or 32 shall be entitled to have his name entered in the register.

(2) Notwithstanding anything contained in sub-section (1), every person-

(i) whose name has been entered in the list prepared u/s 29 and who proves to the satisfaction of the Registrar that he has passed the matriculation examination or any equivalent or higher examination and has been practicing as a whole time or part time practitioner of the homoeopathic system of medicine for a period of not less than three years on the first day of January, 1954; or

(ii) who, in the opinion of the Board, is a fit person to be entered in the register by virtue of his eminent position as a whole time or part-time practitioner of the homoeopathic system of medicine for a period of not less than three years on the first day of January, 1954, and who has applied for the registration of his name in the register before such date as may be notified in this behalf by the State Government in the official Gazette, shall be entitled to have his name entered in the register.

(3) Every person who is entitled to be registered under sub-section (1) or (2) and who applies for the registration of his name shall be liable to pay twenty-five rupees as registration fee.

(4) The names of persons whose names have been entered in the register and the name of those whose applications has been rejected shall be published by the Registrar in the Official Gazette."

13. Any person who is aggrieved by any decision of the Registrar regarding the registration of any person or the making of any entry in the register may file appeal before the Bihar State Board of Medicine. This is provided in Section 23 of the State Act which is thus:-

"23. Appeal to the Board from the decision of Registrar.-Any person aggrieved by any decision of the Registrar regarding the registration of any person or the making of any entry in the register may within ninety days of the publication of the names under sub-section (4) of Section 22, appeal to the Board.

(2) Such appeal shall be heard and decided by the Board in the prescribed manner.

(3) The Board may, of its own motion, or on application by any person, after due and proper inquiries and after giving an opportunity to the persons concerned of being heard, cancel or alter any entry in the register, if in the opinion of the Board, such entry was fraudulently or incorrectly made."

14. The Registrar is required to maintain the register and keep the register correct up-to-date. This is provided in Section 24. Section 24 of the State Act reads thus:-

24. Registrar to keep the register correct and up-to-date.-The Registrar may, with a view to keeping the register correct and up-to-date, from time to time, remove from the register names of such registered homoeopathic practitioners as the address which is entered in the register to inquire whether he has ceased to practice or has changed his residence, and if no reply is received to the said letter within three months, the Registrar may issue a reminder within two months from the date of its issue, he may remove the name of the said practitioner from the register:

Provided that the Registrar may, if he thinks fit, direct that the names of the said practitioner be re-entered in the register on payment of the prescribed fee.

15. Section 28 makes a provision for publication of names entered in the register. It provides thus:-

"28. 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 his behalf by the Board, publish in the Official Gazette and in such other manner as the Board may direct a correct list of names for the time being entered in the register setting forth-

(a) 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; and

(c) the registered title 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 list has not been published, the Registrar shall cause to be printed and published, on or before a date fixed as aforesaid, supplementary list setting forth:-

(a) the particulars specified in clauses (a) to (c) of sub-section (1), in the manner therein laid down, in regard to the persons 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 a registered homoeopathic practitioner and that any person not so entered is not a registered homoeopathic practitioner:

Provided that in the case of a person whose name has been entered in the register after the last publication of the list, a certified copy, signed by the Registrar, of the entry of the name of such person in the register shall be evidenced that such person is registered under this Act. Such certificate shall be issued free of charge."

16. It will, thus, be seen that the Registrar, Bihar State Board of Homoeopathic Medicine has been cast with the duty to keep the register correct and up-to-date and he is further required to publish the names entered in the register time to time as the occasion may require.

17. In so far as subject elections are concerned, there appears to be no dispute that the Returning Officer called from the Registrar the list of members as per the State Register of Homoeopathy and that formed the electoral roll. The register maintained by the Registrar under the provisions of the State Act has to be presumed to be corrected and updated. As a matter of fact, even the Single Judge in the impugned order has observed that some additions have been made in the register from time to time. Be that as it may, what is important is that the electoral roll for election to Central Council has to be prepared on the basis of State Register of Homoeopathy and the persons whose names are enrolled on a State Register of Homoeopathy have to be included in the electoral roll. That the electoral roll has been prepared according to that is not in dispute. As per the scheme of the Central Election Rules if any person is aggrieved by his name having not been included in the electoral roll, he ought to have raised this issue before the Returning Officer as it is for the Returning Officer to decide this question under Rule 6 of the Central Rules. It is pertinent to notice that in so far as the petitioner is concerned, his name was enrolled on the State Register of Homoeopathy and consequently his name was included in the electoral roll. Although in the writ petition, the petitioner has stated that he and few others made representation to the concerned authority with regard to correctness of the electoral roll, there is no material in support thereof. On the other hand, the Returning Officer in his counter affidavit has categorically stated that the

Registrar, Bihar State Board of Homoeopathic Medicine was asked to send up-to-date list of persons enrolled in the register and that on 25th July, 2006, the Registrar sent the electoral roll to him and on 6th November, 2006, the election notice was published and that no grievance or question has been raised to him under Rule 6 from any quarter. In the circumstances, the Single Judge cannot be said to be justified in finding fault with the electoral roll, more so when there was no challenge to that from any quarter before the Returning Officer.

18. The whole approach of the Single Judge in consideration of the matter does not seem to be in conformity with law. It needs no emphasis that once the election process for holding election of the members of the Central Council started by issuance and publication of election notice, the scope of High Court in interference under Article 226 of the Constitution of India at that stage was extremely limited. The present case surely did not fall in exceptional category justifying interference in high prerogative writ jurisdiction once the election process started.

19. The Single Judge has referred to two decisions of the Supreme Court in the case of *Shri Sant Sadguru Janardan Swami (Moingiri Mahraj) Sahakari Dugdha Utpadak Sanstha vs. State of Maharashtra*, (2001)2 SCC 509, *Pundlik Vs. State of Maharashtra and Others*, , justifying the interference in the election process. However, we find that the aforesaid two decisions do not support the case of the petitioner in the facts and circumstances of the present case.

20. Letters Patent Appeal is consequently, allowed. The order dated 5th January, 2007 passed by the Single Judge is quashed and set aside. Resultantly the writ petition stands dismissed. At this stage, we are informed by the counsel for the interveners that subsequent to the order dated 5th January, 2007 passed by the Single Judge, Bihar State Board of Homoeopathic Medicine started correcting and updating its register and fresh notification has been issued. We may notice that u/s 4 of the Central Act, the election is conducted by the Central Government. In the event of any dispute regarding election to Central Council, sub-section (2) of Section 4 provides that such dispute shall be referred to the Central Government whose decision shall be final. In the circumstances, it is for the Central Government who has to take a final call as to whether it must take the election notified vide election notice dated 3rd November, 2006 published in *Dainik Jagaran* on 7th November, 2006 to a logical conclusion or to hold the election afresh since the Bihar State Board of Homoeopathy has started updating and correcting the State Register of Homoeopathy. Order, accordingly.