

(2000) 01 DEL CK 0098
In the Delhi High Court
Case No : C.W.P. No. 4854/97

R.K. Bali (Dr.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Dental Council Act, 1948 — Section 3, 6, 7

Citation : (2000) 2 AD 673

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Madan Bhatia and Mr. Sandeep Sethi Adv, for the Appellant; Mr. Rakesh Tikku, Mr. R.L. Kohli, Mr. Dhruv Mehta and Ms. Shobha, for the Respondent

Judgement

K. Ramamoorthy, J.—In the above writ petition the election to the Presidentship of the Dental Council of India was challenged by the fourth respondent before the Govt. of India and the Govt. of India allowed the representation by order dated 6.11.1997. The fourth respondent challenged the election before the Central Government u/s 5 of the Dentists Act, 1948.

2. The matter was argued at length by the learned counsel for the parties. The facts necessary for the appreciation of points raised by the parties could be noticed thus:

There were 65 Members on the roll of Dental Council of India as on 6.11.1995. Election had to be held for the purpose of electing the President and Vice President of the Dental Council of India. The election was to take place on 6.11.1995 in the meeting of the General Body. Before that date, in or about October 1995 three Doctors: (1) Lt. Col Dr. Daljit Singh, (2) Dr. Manjit Singh, and (3) Dr. R.P. Vaish instituted C.W.P. 3878/95 as a public interest litigation for quashing the order of transfer of registration of Dr. Bali, the petitioner herein, from Delhi to Punjab and for quashing the nomination of Dr. Bali as a Member of

the Dental Council of India. Dr. Sridhar Sethi, who was the 6th respondent herein, supported the case of the three petitioners.

3. One Dr. K.B. Kamath filed C.W. 4055/95 for the relief that he should be permitted to continue as member of the Dental Council of India. On 3.11.1995 a Division Bench of this Court passed the following order :-

C.W. 4055/95:

Respondent No. 3 is served and is represented today. Respondent No. 1 is also served as per the endorsement on the notice, which has been filed by learned counsel for the petitioner today in court. There is no appearance on behalf of respondent No. 1. Notice be issued to Sh. Madan Lokur learned counsel for Union of India without process fee for 5.12.1995.

Learned counsel for the petitioner states that to the second respondent notice was sent. Fresh notice be issued to respondent No. 2 on petitioner's filing registered covers and process fee for 5.12.1995.

C.M. 6804/95:

Petitioner has prayed for interim relief that during the pendency of the petition, he may be permitted to continue as member of respondent No. 3 and take part and participate in all proceedings of the council including elections to the Executive Committee, to be held from 6.11.1995.

As per the averments made in the petition, the petitioner was elected/nominated to the Dental Council of India by the Dentists registered in para A of the Register of the Goa State Dental Council u/s 3 of the Dentists Act, 1948 w.e.f. 8.3.95.

Due intimation is stated to have been given by the Returning Officer, the Director of Health Services, Panaji (Goa), to respondents 1 and 3 and it appears, that petitioner's nomination as duly accepted and on that basis on 23.8.95 he was asked by Respondent No.3 to participate in the meeting of the General Body of Dental Council of India, which was scheduled to be held at Bangalore on 8.9.95, 9.9.95 and 10.9.95.

In view of the above, an interim order is passed permitting the petitioner to continue to act as a member of respondent No. 3 for all intents and purposes till further orders.

List on 5.12.95.

Dasti".

4. As I had noticed above, on 6.11.1995 out of 65 members of the Dental Council of India 63 attended the General Body Meeting. The 4th respondent Dr. L.K. Gandhi was present in the meeting. The relevant portion of the minute of the 89th Session of the Dental Council of India held on 6.11.1995 reads as under :-

"CW. 4055/95:

Respondent No. 3 is served and is represented today Respondent No. 1 is also served as per the endorsement on the notice, which has been filed by learned counsel for the petitioner today in court. There is no appearance on behalf of respondent No. 1 Notice be issued to Sh. Madan Lokur learned counsel for Union of India without process fee for 5.12.1995:

Learned counsel for the petitioner states that to the second respondent notice was sent. Fresh notice be issued to respondent No. 2 on petitioner's filing registered covers and process fee for 5.12.1995.

CM. 6804/95:

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As per the averments made in the petition, the petitioner was elected/nominated to the Dental Council of India by the Dentists registered in para A of the Register of the Goa State Dental Council u/s 3 of the Dentists Act, 1948 w.e.f. 8.3.95. Due intimation is stated to have been given by the Returning Officer, the Director of Health Services, Panaji (Goa), to respondents 1 and 3 and it appears that petitioner's nomination was duly accepted and on that basis on 23.8.95 he was asked by Respondent No. 3 to participate in the meeting of the General Body of Dental Council of India, which was scheduled to be held at Bangalore on 8.9.95, 9.9.95 and 10.9.95.

In view of the above, an interim order is passed permitting the petitioner to continue to act as a member of respondent No. 3 for all intents and purposes till further orders.

List on 5.12.95.

Dasti".

5. The President of that meeting introduced 16 members including Dr. K.P. Kamat, Dr. Ravindra Ratolikar and Dr.R.K. Bali. It is noticed therein:-

"All, the above members Elected/Nominated under various sections of the Act were greeted with applause by the Acting President and all the members of the Council who welcomed them to the meeting."

6. In the election there was a tie between the petitioner Dr. R.K. Bali and Dr. N. Sridhar Shetty, each having secured 22 votes. The 4th respondent Dr. L.K. Gandhi secured 18 votes. On 13.11.1995 the 4th respondent Dr. L.K. Gandhi sent his representation to the Central Government stating that two members Dr. Ravindra Ratolikar and Dr. V.K. Gupta were not eligible to participate in the election as their election to the Dental Council of India had not been notified in

the Gazette to India as required under regulation. The 4th respondent further stated that Dr. V.P. Bansal, Addl. Director General Health Services, who attended the meeting as a nominee of the Director General Health Services had only the right to attend the meeting but was not entitled to vote. The Dental Council in order to resolve the issue arising out of the tie referred the matter for legal opinion. On the basis of the opinion given by the counsel it was decided that Dr. N. Sridhar Shetty would function as the President till 16.1.1998 and Dr. R.K. Bali, the petitioner herein, would function as the President from 17.1.1998 till the completion of the 57 tenure of the office of the President. Accepting the proposal on 30.11.1995 Dr. N. Sridhar Shetty and Dr. R.K. Bali wrote to the Secretary, Dental Council of India:-

"We acknowledge the receipt of the legal opinion sought by you from the legal adviser of the Dental Council of India. Giving the verdict of the electorate our utmost respect and in view of the legal opinion rendered by Sh. R.L. Kohli, Advocate of the Dental Council of India, we have resolved that in conformity with the opinion rendered by the Advocate of the Council, we are prepared to share the tenure of the Office of the President of the Dental Council of India as stated hereunder:-

Dr. N. Sridhar Shetty Till 16th Jan, 1998.

Dr. R.K. Bali From 17th Jan., 1998 onwards.

We have resolved that for the earlier period as indicated above, Dr. N. Sridhar Shetty shall be the President of Dental Council of India and shall relieve the office on the 16th of January, 1998 so that Dr. R.K. Bali thenceforth be President of the Dental Council of India for the remainder period.

This is our free will and it is in the interest of the Council also and for giving the fact to the mandate of the electorate.

We, Therefore, request you to seek the approval and the ruling according".

7. On 8.4.1996 those two Doctors wrote to the Secretary the following:-

"In continuation of our letter jointly signed on 30.11.1995, we further agree that in the event of any unforeseen eventuality, like disability arising due to health or death of either of us, we have agreed that the office of the Present shall revert to the other member during the reminder period."

8. On 15.5.1996 the General Body Meeting held for the purpose of electing the Vice-President. Dr. L.K. Gandhi had participated in the same. He contested for the office of Vice-President also. On 7.6.1996 the 4th respondent herein Dr. L.K. Gandhi filed C.W.P. 3242/96 for quashing the election held on 6.11.1995. On 30.9.1996 this Court passed the following order :-

"C.W. No. 2342/96 & C.M. 4151/96

The petitioners are aggrieved by the election held for the post of the President of

Dental Council of India on November 6, 1995 and have prayed for direction that the same be declared invalid and the post be treated as vacant. The said election has been held under the provisions, of the Dentists Act, 1948 as amended. Chapter II of the said Act deals with the Dental Council of India and mode of elections. Section 5 states that the elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Central Government whose decision shall be final. Similarly Section 7 provides for the posts of President and Vice-President of the Dental Council of India and the manner in which the election takes place.

Notice to show cause was issued in this petition and the Government of India, respondent No. 1 herein, have categorically stated in its counter affidavit in paragraph 5(c) as follows:-

"5(c) In reply to para 5(c) it is submitted that Dr. L.K. Gandhi made a representation to the Central Government challenging the legality of election held on 6.11.1995 for the office of President u/s 5 of the Act and it is under active consideration."

Therefore, on the basis of the reply it is clear that respondent No. 1, Government of India, is seized of the matter and is actively considering the same. The Central Government in view of the above statement shall now consider the representations of the petitioners in accordance with law within four weeks from today. This petition is disposed of in the above terms.

Let copy of the order be given dusty to counsel for the parties."

9. On 29.10.1996 the Govt. of India, as per the directions issued by this Court in C.W. 3242/96 on 30.9.1996, appointed Mr. N.M. Perumal as an Enquiry Officer. On 1.11.1996 the Enquiry Officer informed the petitioner about This appointment as Enquiry Officer. On 6.11.1996 the Enquiry Officer wrote to the petitioner enclosing a copy of the representation sent by Dr. L.K. Gandhi asking him to give his comments. The petitioner sent his reply on 2.12.1996:-

"Enclosed herewith please find my paradise reply to the representation of Dr. L.K. Gandhi which was sent to me under your D.O. letter - No. PA/DS(CHS)EO/96 Dated 6.11.96 in terms of orders of the Hon"ble High Court of Delhi.

I will see you in your office on the 9th instant at 4 pm, as fixed.

With best wishes."

10. On 24.12.1996 the Enquiry Officer gave his report holding the election invalid:

"Inquiry Report on the representation of Dr. L.K. Gandhi regarding election to the post of President of the Dental Council of India held on 6.11.95.

1. Introduction.

(i) Dr. L.K. Gandhi one of the contestants for the post of the President of the Dental Council of India (here in after called DCI) in the election held on 6.11.95 submitted a representation to the Government of India challenging the legality of the election held on 6.11.95. Thereafter as he was not satisfied with the outcome of his representation filed a Civil Writ Petition No. 2342/96 and CMP 4151/96 in the honourable High Court of Delhi with the prayer that the election be declared as invalid and the post of the President DCI be treated as vacant.

(ii) Taking into account Dr. Gandhi's objection, raised in the petition under reference, the Honourable High Court of Delhi, issued directions to the Respondent No. 1 i.e. Union of India (Ministry of Health and Family Welfare) to consider the representation of the petitioner in accordance with the Law within four weeks from 30.9.96.

(iii) Taking into account the honourable High Court's direction and representation submitted by Dr. Gandhi for setting aside the election for the office of the President, the Central Government in exercise of powers conferred by Section 5 of the Dentists Act, 1948 and Regulation No. 20 of the DCI (Election) Regulations 1952, appointed me, M.M. Perumal, Deputy Secretary, as the Inquiry Officer to inquire into the allegations made by Dr. L.K. Gandhi vide Order No. V-12025/9/96-PMS dated 29.10.96 and directed to submit a report to the Central Government.

2. Written submissions and oral hearing.

Dr. L.K. Gandhi, Dr. R.K. Bali and Dr. N. Sridhar Shetty who were among the contestants for the post of President in the election held on 6.11.95 made written submissions on the various points raised by Dr. L.K. Gandhi. Their written submissions may please be seen at the linked folder marked "M". In addition to the above written submissions, Dr. V.P. Bansal Addl. DGHS, Dr. B.P. Rajan, the Returning Officer, Dr. N. Sridhar Shetty, Dr. R.K. Bali, Dr. L.K. Gandhi and Shri A.L. Miglani Secretary DCI were invited for oral hearing. Their statements in their oral hearing have been placed at the linked folder marked "N".

3. Taking into account the submissions made by various parties in their written replies and oral hearing. I hereby submit my report as in the succeeding paragraphs.

4. Dr. Gandhi had submitted his representation u/s 5 of the Dentist Act, 1948. This has been challenged by Dr. R.K. Bali who has contended that Section 5 relates to disputes regarding elections contemplated by section of the Act (i.e) of the members of the DCI. Dr. Sridhar Shetty has also endorsed the views of Dr.R.K. Bali.

However it is seen that Section 7 of the Dentist Act which is included in Chapter II of the said Act relates to the election of the President and Vice President of the Council. Section 5 clearly stipulates that disputes relating to the elections referred to under Chapter II shall be referred to the Central Government. In view

of the above, I reject the objections of Dr. R.K. Bali and Dr. Sridhar Shetty on this issue.

5. Eligibility of Dr. Ravindra Ratolikar and Dr. V.K. Gupta.

(i) Dr. Gandhi's contention is that Dr. V.K. Gupta and Dr. Ravindra Ratolikar were not authorised to vote as their elections u/s 3(a) of the Dentist Act, 1948 were not published in the Official Gazette of the Central Government as mandatorily required under Dental Council Election Regulations 1952, the position of which has been affirmed by the Honourable Delhi High Court in the case of Dr. Prem Sachdeva Vs. UOI in CWP No. 3021 of 1995.

(ii) While refuting the above contention, Dr. Shetty has pointed out that Section 19 of Dental Council (Elections) Regulations 1952 is not mandatory for the members of 3(a) for being allowed to vote in the election. Dr. Shetty has pointed out that nowhere in the said judgment of Dr. Prem Sachdeva, it has been held that the publication in the Official Gazette is necessary for any category.

(iii) Dr. Bali's contention is that the judgment of the High Court in the case of Dr. Prem Sachdeva Vs. UOI was not relevant in the case of the persons elected u/s 3(a) of the Dentist Act and the judgment is entirely related to the members elected u/s 3(b), (c) and (d) and (e) of the Act. Dr. Bali has also pointed out that Section 17 of Election Regulations makes it very clear that a person becomes duly elected as member of the Dental Council as soon as the Returning Officer declares that he has received the largest number of valid votes and has been elected. Dr. Bali further enclosed a copy of the notification of the Returning Officer in the A.P. Gazette dated 20.10.95 about election of a number of members including Dr. Ratolikar.

(iv) I have gone through the judgment in CWP 3021/95 Dr. Prem Sachdeva Vs. Union of India and Others decided by the Honourable High Court of Delhi on 31st August, 1995. According to me the High Court of Delhi have specifically held the view that no Gazette Notification is necessary in the case of persons nominated/ elected under the provision of Sections (b), (c), (d) and (e) of Section 3 and they can act as members immediately on their nominations/election. However, it appears to me on the regarding of the judgment that Hon'ble High Court is of the view that publication of the result in the gazette is necessary in the case of elected persons u/s 3(a) of the Dentist Act. While examining the case relating to the notification in respect of members under Sections 3(b), (c), (d), and (e) of the Dentist Act, 1948, the High Court have clearly held the view that notification is necessary in respect of members covered u/s 3(b) of the Dentist Act.

(v) In view of the above reasoning, I consider that Dr. V.K. Gupta and Dr. Ratolikar who were elected w.e.f. 2.12.1994 and 17.10.95 respectively and whose elections were not notified by the Central Government in the gazette till 6.11.95 were not eligible to vote on 6.11.95.

6. Voting by Dr. V.P. Bansal, Addl. DGHS.

(i) Dr. Gandhi in his representation has alleged that Dr. Bansal Additional Director General of Health Services, could not vote because under the Dentist Act, 1948, only Director General of Health Services, is an ex-officio member, and he cannot delegate his authority because the Act does not provide for such delegation.

(ii) From the examination of the submissions made and evidences on the record, it is seen that no member who was present during the course of the election raised any objection in writing against the voting of Dr. V.P. Bansal, Secretary, Dental Council of India in his submission has pointed out that as per Rule 27(2) of the Regulations of the Dental Council as modified up to Feb., 1982, the nominee of the Director General of Health Services can attend the meetings of the council in the absence of the Director General of Health Services.

(iii) According to Section 7(i) of the Dentist Act 1948 the President and Vice President of the Council shall be elected by the members thereof, from among themselves. According to Section 3(g) of the same Act Director General of Health Services is an ex-officio member, of the council. There is no indication either in the Act or the Regulations about the nominee of the DGHS as far as the purpose of voting is concerned. Section 27 of Regulations of Dental Council of India talks of the persons who can attend the meetings. In this Section, 4 representatives of the press can attend the meeting at the discretion of the President on permits from the Secretary. Hence, the provision under the Section cannot be construed "as the nominee of the Director General of Health Services can not only attend the meeting but also vote during the election".

(iv) In the light of the provisions of the Act and regulations relating to DCI, Therefore, I hold that Dr. Bansal, Additional DGHS, was not eligible to vote in the said election."

7. Dual membership of Dr. R.k. Bali.

(i) Dr. Gandhi in his representation has alleged that Dr. R.K. Bali was representing 2 constituencies i.e. nomination from the Government of Punjab u/s 3(e) of the Dentist Act, and election by the State Council u/s 3(a) of the Dentist Act on the date of the election viz. 6.11.95. According to Dr. Gandhi, voting by Dr. R.K. Bali is clearly illegal as Dr. Bali did not indicate which of the constituencies he represented.

(ii) Secretary, DCI pointed out that there is no provision in the DCI Regulations and Dentist Act that one can hold only one constituency. The only requirement is that one should be a member as per Section 3 of the Dentist Act.

(iii) From the evidences and records placed before me, it is pointed out that there is no express provision either in the Dentist Act, or in any other regulation that a member having been elected in one of the categories cannot be elected in another category. It is also seen that if a member holds membership in two categories, it is not mandatory to resign from the other category within a stipulated period of time.

(iv) In view of the above, the participation of Dr. R.K. Bali and voting without naming the constituency he represented is not illegal particularly when he has exercised only one vote in the said election.

8. Vote of Dr. R.P. Vaish.

(i) In the election held on 6.11.95 there was only one invalid vote. According to Dr. Gandhi this vote was cast by Dr. R.P. Vaish. It has been claimed by Dr. Gandhi that Dr. R.P. Vaish who had seconded his nomination to the post of President, was not able to bend while casting his vote for the post of President. According to Dr. Gandhi, Dr. Vaish had informed him that he cast his vote on estimation basis and there was scope of parallel error in sighting the ballot paper, whereby he by mistake marked in the fourth column where there was no name. He could not verify because he was not able to bend while casting his vote.

(ii) It may be pointed out that the system of voting was by secret ballot, and as such it is not possible to know exactly as to whose vote was invalid. However, if one of the voting marks was so placed as to make it doubtful, the said vote is rendered invalid. It is pertinent to mention that physical inability of a voter is not just and equitable ground to attach validity to any invalid vote.

(iii) Accordingly, the invalid vote reportedly cast by Dr. R.P. Vaish cannot be held valid on the ground of his physical inability.

9. Inclusion of a large number of members in the last minute.

(i) According to Dr. Gandhi, only those members who had found a place in the voters list circulated on 30.10.95 were entitled to participate and vote in the meeting. Further, according to him, in addition to the above, only those members who had obtained any stay order/appropriate orders from the court alone are entitled to participate in the meeting. In view of the same, according to Dr. Gandhi, inclusion of a number of members till the last minute was highly irregular and improper.

(ii) According to Dr. Shetty, the names of the members of the Council were duly published by the Dental Council of India. The new members who had become the members after the last meeting were also specified and the names were announced and the same were recorded in the minutes at para 3(2). The same names were also read over to the house and the house has unanimously approved without raising any objection and it was on the said voters list of members Constituting the council that the election process started and concluded with the unanimous approval of all.

(iii) Sh. A.L. Miglani, Secretary, Dental Council of India has submitted that there was no electoral roll as such and there was no circulation of the voters list on 30.10.95. The list of members which was updated as on 6.11.95 was read out by the Secretary which were accepted by the members for the election of the President, Dental Council of India. He further contended that the list of members was displayed outside the meeting hall. The Returning Officer has also broadly

endorsed the views of Secretary, DCI. Dr. Bali also contends that the list of members was only published and circulated prior to meeting. He further points out that prior to the election the names of new members were read out and unanimously approved by the house without protest or demur and only such members participated in the election who were competent to do so.

(iv) The contentions and evidences produced before me were examined. Rule 3&4 of the Dental Council Election Regulations 1952 as modified up to 15.9.1981, indicates about the preparation and finalisation of preliminary electoral roll and fixation of the date for various stages of election to State Council u/s 3(a) of the Dentist Act, 1948. This aspect of election process is generally followed in all the elections in any organisation. The preparation and finalisation of electoral roll after inviting objections, if any is a normal election process. The process of fixation of dates for various stages of election giving reasonable time for objections, if is also a minimum requirement in any election process. Hence, inspire of any convention and practices being followed by the Dental Council of India since its inception regarding election for the post of President, Vice-President etc. manifestly, inclusion of large number of members in the last minute is not in accordance with the established practice and procedure in any election process as this does not give time for the contestants to arrive at a conclusion whether the inclusion of a person as a member is valid or not and file objections there on within a reasonable period of time.

10. Conclusion:

In view of what has been stated in the preceding paragraphs, I am of the view that the election held on 6.11.95 for the election of President D.C.I. had infirmities including non observance of normal procedure expected in an election.

11. It has to be noticed at this stage, on 10.3.1997 the Division Bench, which passed the interim order on 3.11.1995, confirmed the earlier order and the order is as under:

"CW. 4055 & CM. 6804/95.

Mr. Kalra and Mr. Kohli have drawn our attention to the letter of the Government itself dated 2nd and 3rd July, 1990, inter alia, stating that there is no need to notify the names of members in the Gazette of India on their election/nomination on the Council. Our attention has also been drawn to the communication dated 16th February, 1953, inter alia, stating that persons who have been declared elected by the Returning Officer in accordance with Regulation 17 of the Dental Council (Election) Regulation, 1952 are entitled to attend the meeting of the Council irrespective of the fact whether their election has or has not been notified in the official gazette. The State of Goa in its reply has stated that it is awaiting the decision of the Central Government in the said Election Petition filed by losing candidate Suresh Balachander Shetty against the petitioner and after the said decision it will take necessary steps as per their directives. No one is present for respondents 1 and 2. We accordingly issue Rule in the writ petition and make

absolute the order dated 3rd November, 1995 made in CM. 6804/95. CM. 6804/95 is disposed of accordingly."

12. On 26.3.1997 the petitioner wrote to the Govt. of India about the proceedings relating to the election to the office of the Vice-President :

"Fact-finding inquiry by the Govt. on the representation of Dr. L.K. Gandhi, under orders of Hon'ble High Court in CWP No. 2342 of 1995.

This is in continuation of my earlier letters of 22nd and 25th instant on the subject.

A crucial point worth notice in this case is that while the constitution of the electoral roll for the election of President D.C.I. held on 6.11.95 is being questioned, in the above-said representation, no mention worth the name is being made about the election held for the posts of Members of the Executive Committee with the same electoral roll and in the same meeting. While the election for Vice President and Executive Committee are correct, the President's election is also correct viewed with the same parameter.

At a later date in the next General Body meeting of the D.C.I. the election for the post of Vice President was held with the same electoral roll, excepting DGHS/ Addl. DGHS. Thus all the three elections, viz. President, Vice-President and Members of Executive Committee were conducted according to Sections 7 and 9 of the Act from amongst, the members present on the day of the meeting and "election" being one of the items on the agenda of that particular meeting of the General Body. These three elections are interconnected as elevation, if any, from amongst the E.C. Members will result in a vacancy in the Executive Committee, while the election of President or Vice-President will also give rise to a vacancy.

The reason for singling out President's election and making it a point of representation, while maintaining silence on the election of Vice-President and E.C. members needs a probe which will bring to light the role being played by a few vested interests particularly the losing candidate and the representationist."

13. On 11.4.1997 the Govt. of India wrote to the Secretary, Dental Council of India:

"Election of the Vice-President to Dental Council of India.

I am directed to refer to the subject noted above and to request that it may kindly be clarified as to whether the election for the office of Vice-President, Dental Council of India was held in the same meeting and with same voters which elected the President, Dental Council of India on 6th November, 1995 or it was held separately. The list of voters who participated in the elections of the Vice-President may also be furnished immediately."

14. On 28.4.1997 the Dental Council of India wrote to the Central Government :

"Election of the Vice-President to Dental Council of India.

Kindly refer to your letter No. V. 12025/9/96-PMS dated 11th April, 1997, on the subject noted above.

As required, I may inform that General Body meeting was held on 6.11.1995, had item No. 5 on its Agenda i.e. To elect the President of the Council u/s 7 of the Dentists Act, 1948. The Members of the Council who were present including the Addl. Director General of Health Services were 63 including Dr. K.P. Kamath, Dr. Ravinder Ratolikar and Dr. V.K. Gupta. The list of the members who were present and voted at the elections held for the Office of President and Executive committee members is annexed as Annexure-A".

It is submitted that the undersigned had read over the names of valid members of the Dental Council of India in the meeting and the House had unanimously approved the membership list announced. The elections for the office of the President, Vice-President and Members on the Executive Committee were held as per Sections 7 and 9 respectively of the Dentists Act and in the same manner as being followed since inception of the Council.

It was with the said electorate that three candidates for the Office of President were proposed and seconded without any body objecting to the validity or otherwise of any member, the General Body of the Dental Council of India at its meeting held on 6.11.1995 had item No. 5 on its Agenda i.e. "To effect the President of the Council". The Members unanimously proposed the name of Dr. B.P. Rajan to be the Returning Officer for the election of the President since the Acting President stated that he is one of the contestant for the post of President of the Dental Council of India. Dr. B.P. Rajan occupied the chair and the house selected the two scrutinising Officers namely:

1. Dr. N. Rajeeva Shetty
2. Dr. C.P. Govila

The Returning Officer called for the nomination and the following names were proposed and seconded:

1. Dr. R.K. Bali proposed by Dr. Pradip Jayna and seconded Dr. Sandesh Mayekar.
2. Dr. L.K. Gandhi proposed by Dr. Hari Prakash and seconded by Dr. R.P. Vaish.
3. Dr. N. Sridhar Shetty proposed by Dr. B. Suresh Chandra and seconded by Dr. N. Gnanasundaram.

The Returning Officer gave two minutes time for any withdrawal and in the absence of any withdrawal declared the above three names valid for the election of the President.

The attendance register was closed which showed 63 members present. In total 63 members voted in the election and the following was the result submitted by the scrutinises Returning Officer. The counting was done in the presence of the representaive for each candidate Dr. Pradip Jayna for Dr. Bali, Dr. Hari Prakash

for Dr. L.K. Gandhi and Dr. B. Suresh chandra for Dr. N. Sridhar Shetty.

1. Votes polled for Dr. R.K. Bali. 22
2. Votes polled for Dr. L.K. Gandhi. 22
3. Votes polled for Dr. N. Sridhar Shetty .22

Invalid vote: .1

The Returning Officer announced the votes polled for each of the candidate and also invalid vote. He showed the members that invalid vote in the fourth column where there was no name of any member had its stamp. It was also informed that the office instead of making three columns made 4 columns and however as the stamp was not against any names that one vote has been declared as an invalid vote.

The House was informed that in the event of equality of vote of 2 or more members the lot has been drawn as per the election for Section 3(a) of the Regulation (Election). The house was also informed by Returning Officer that the Dentists Act states that in the event of the dispute the matter has to be referred to the Central Government. The House was also informed that the two Members have equal votes and were informed of the number of votes polled by them. The House was of the unanimous opinion that there is no clear ruling in the Act or in the regulations with regard to the next step. Hence the House decided to refer the matter to the Central Govt. and the announcement of the result has been reserved. The contents of the Minutes is read to the members of the Dental Council of India and approved at 1.30 p.m. as proposed by Dr. V.P. Jalili and seconded by Dr. R.N. Singh.

All the Ballot papers used have been kept sealed in the safe custody of the Secretary, Dental Council of India.

Dr. B.P. Rajan requested Dr. N. Sridhar Shetty to take the chair as Acting President of the Council for the remaining business. As the result of election regarding the office of President was that there was a tie amongst the winning candidates viz. Dr. R.K. Bali and Dr. N. Sridhar Shetty.

Further, it may inform that the General Body Meeting was held on 6.11.1995 had item No. 7 on its Agenda i.e. "To elect the Vice- President of the Council in case vacancy is caused on account of election of the President of the Council u/s 7 of the Dentists Act". Since the announcement of the result of election for the post of the President of the Council had been reserved hence the said matter was not taken up. Thereafter, the President at the same meeting under item No. 8, invited proposal for election of 4 (four) Members on the Executive Committee of the Council.

The Following names were proposed and seconded:

1. Dr. Hari Prakash Proposed by Dr. (Mrs.) Mohini Puri seconded by Dr. L.K.

Gandhi.

2. Dr. V.P. Jalili Proposed by Dr. G.R. Bhat seconded by Dr. O.P. Nar.
3. Dr. B.P. Singh Proposed by Dr. R.N. Singh seconded by Dr. S.K. Sen.
4. Dr. B.R. Bhuyan Proposed by Dr. A.C. Bhuyan seconded by Dr. P.D. Bora.
5. Dr. (Mrs.) Shivarathna C. Savadi Proposed by Dr. B. Suresh Chandra seconded by Dr. N.T. Venkatehaiah.
6. Dr. C. Bhasker Rao Proposed by Dr. Pradip Jayna seconded by Dr. K. Jyothindra Kumar.
7. Dr. K.S. Nagesh Proposed by Dr. H.R. Premasachdeva seconded by Dr. N. Gnanasundram.
8. Dr. K.N. Velayudhan Proposed by Dr. K.G. Nair seconded by Dr. N.S. Rajeeva.
9. Dr. T. Samraj Proposed by Dr. N. Gnanasundram seconded by Dr. G.R. Bhat.
10. Dr. V.K. Hazarey Proposed by Dr. H.S. Dhooria seconded by Dr. P.M. Jadhav.
11. Dr. Girish J. Parmar Proposed by Dr. C.A. Desai seconded by Dr. S. Bhattacharya.
12. Dr. Satish Chandra Proposed by Dr. O.P. Nar seconded by Dr. (Mrs.) Mohini Puri.
13. Dr. S.S. Dua Proposed by Dr. R.P. Singh seconded by Dr. Pradip Jayna.

Dr. N. Rajeeva Shetty and Dr. C.P. Govila were again appointed as scrutinizers by the Council for this E.C. election also.

The Chair called for withdrawal, if any.

On voting by secret ballot, the result were:

1. Dr. C. Bhasker Rao: 22 votes 2. Dr. V.P. Jalili 16: votes 3. Dr. B.P. Singh 15: votes 4. Dr. Hari Prakash 14: votes 5. Dr. Girish J. Parmar 12: votes 6. Dr. T. Samraj: 11 votes 7. Dr. B.R. Bhuyan: 10 votes 8. Dr. K.S. Nagesh: 10 votes 9. Dr. S.S. Dua: 9 votes 10. Dr. (Mrs.) Shivrathan: 9 votes Savadi. 11. Dr. Satish Chandra: 8 votes 12. Dr. V.K. Hazarey: 7 votes 13. Dr. K.N. Velayudhan Nair: 7 votes Invalid: 3 votes

On a majority of votes, Dr. C. Bhasker Rao, Dr. V.P. Jalili, Dr. B.P. Singh & Dr. Hari Prakash were declared elected against the 4 vacancies on the Executive Committee of the Council.

Prof. (Dr.) N. Sridhar Shetty in chair informed the house that the Govt. of India, Ministry of Health & F.W. (Deptt. of Health), New Delhi vide their letter No. V.12013/14/95 PMS dated 30.4.96 have taken on record the arrangements regarding sharing of the tenure of office of the President of the Dental Council of

India between the winning candidates, Prof. (Dr.) N. Sridhar Shetty shall hold office of the President of the DCI till 16.01.98 and Dr. R.K. Bali shall be the President of the, Council from 17.01.98 onwards (Annexure "C" & "D"). The Council, after some discussion, accepted the letter referred to above from the Govt. of India, as a ruling. The members congratulated Prof. (Dr.) N. Sridhar Shetty and Dr. R.K. Bali for showing spirit of co-operation in the larger interest of the Council.

Further it was also requested by members that item No. 76 - "To elect the Vice-President of the Council", be taken up immediately since there is a vacancy caused by the above decision of the Govt. of India and the Council. The President accepted the said proposal and announced that Item No. 76 "To elect the Vice President of the Council" and Item No. 77" To elect a member of the Executive Committee of the Council in case a vacancy is caused on account of election of the Vice-President of the Council", shall be taken up immediately after the lunch break on 15th May, 96.

The elections for the Office of Vice-President could not be held on 6.11.1995 as the Office of Vice-President had to fall vacant on confirmation of the result and resolution of the tie. As the tie was resolved, the election for the Office of Vice President was held on 15.5.96 and it had 66 members present and voting, the list whereof is annexed as Annexure "B" and in that except that Director General Health Services, was not present, the members present were the same and there were few others who were not present on the last meeting were also present. Significantly Dr. Kamath, Dr. Ravindra Ratolikar and Dr. V.K. Gupta were present as members and they also participated in the voting for electing Vice-President, Dental Council of India. The Status of these members remained the same as was on 6.11.95 in the case of election of the President of the Council. It may be mentioned that the new members who had come at the meeting were also introduced and they also participated in the election. I may mention that it was on the unanimous request that item No. 76 of the agenda viz. To elect the Vice-President of the Council was taken up immediately after lunch break on 15.5.96. Accordingly President Dr. N. Sridhar Shetty invited proposals for the election of the Vice President:

The following names were proposed and seconded:-

1. Dr. L.K. Gandhi Proposed by Dr. Hari Prakash seconded by Dr. H.R. Prem Sachdeva.
2. Dr. P. Ramachandra Proposed by Dr. A.S. Narayana seconded by Dr. Ravindra Ratolikar.
3. Dr. V.P. Jalili - Proposed by Dr. P.V. Diwanji seconded by Dr. O.P. Nar.
4. Dr. C. Bhaskar Rao - Proposed by Dr. N.S. Rajivan second by Dr. K.N. Velayudin Nair.

Dr. (Mrs.) Amrit Tewari & Dr. (Mrs.) Manju Dutta were appointed as scrutinizers

by the Council.

The chair called for withdrawal, if any.

Dr. L.K. Gandhi withdrew his candidature.

As there were now three candidates for the office of Vice-President of the council, the election was Therefore conducted by secret ballot.

On voting secret ballot, the results were:

1. Dr. C. Bhasker Rao - 25 votes
2. Dr. V.P. Jalili - 23 votes
3. Dr. P. Ramachandra - 18 votes Reddy.

Invalid - Nil

On the majority of votes Dr. C. Bhasker Rao was declared elected Vice-President of the Council with acclamation.

Thereafter, the President Prof. (Dr.) N. Sridhar Shetty requested Dr. C. Bhasker Rao to take the Chair of Vice-President and congratulated him on his own behalf and on behalf of the Council.

Since Dr. C. Bhasker Rao who was the member on the Executive Committee was declared elected as Vice-President of the Council resulting in vacancy of 1 seat of the Executive Committee. The President at the same meeting under item No. 77 invited proposals for election of 1 (One) Member on the Executive Committee of the Council.

The following names were proposed and seconded:

1. Dr. S.V. Bhagwat Proposed by Dr. R.S. Dolas seconded by Dr. P.M. Jadhav.
2. Dr. Jyothindra Kumar Proposed by Dr. K.N. Velayudhan Nair seconded by Dr. R.N. Singh.
3. Dr. Shivarathana C. Savadi Proposed by Dr. P.R. Reddy seconded by Dr. Perminder Kaur.
4. Dr. B.R. Bhuyan Proposed by Dr. B.K. Choudhary second by Dr. A.C. Bhuyan.
5. Dr. Satish Chandra Proposed by Dr. B. Suresh Chandra seconded by Dr. H.H. Hathi.

As there were five candidates for one post of the Member, Executive, the election was conducted by Secret Ballots.

Dr. P.V. Diwanji & Dr. G.R. Bhat were appointed as scrutinizers by the Council.

The chair called for withdrawal, if any.

There was no withdrawal.

On voting by secret ballot, the result were:

1. Dr. S.V. Bhagwat - 10 votes
2. Dr. Jyothindra Kumar - 19 votes
3. Dr. (Mrs.) Shivrathana - 05 votes
- C. Savadi.
4. Dr. B.R. Bhuyan - 27 votes
5. Satish Chandra - 05 votes.

On a majority of votes, Dr. B.R. Bhuyan was declared elected against the one vacancies on the Executive Committee of the Council.

The ballot papers were thereafter destroyed on the spot as directed by the Council.

The perusal of the two lists of electoral college Annexure-A and B would show that in the first meeting held on 6.11.95 on which the election of President and Executive Committee members were held, there was Addl. DGHS present apart from Dr. Kamath, Dr. Ratollikar and Dr. V.K. Gupta amongst other members and even for the election held for electing the Vice-President ,and one Executive Committee members, the Director General Health Services was not present and as before Dr. Kamath, Dr. Ratollikar and Dr. Gupta were present as members for purposes of electing the VicePresident and one Member of the Executive Committee.

The comparative list showing the names of members who had participated in the meeting held on 6.11.1995 on which the election of the President and E.C. members were held & who had participated the meeting held on 15.5.1996 in which the election of the Vice President & one E.C. Member were held. (Annexure "E")

It may also be mentioned that the members viz. Dr. V.K. Gupta and Dr. Ravindra Ratollikar those membership has been questioned by Dr. L.K. Gandhi in his representation dated 13.11.1995, were present in both meetings and had participated in the election & voted for elections of the President, Vice-President and Members on the Executive Committee.

This gives the total picture of all the elections viz. President, Vice-President and Members on Executive Committee.

The Minutes of the two meetings have been already forwarded to you and if any other information is required, the undersigned shall be glad to furnish the same."

15. On 21.5.1997 the Govt. of the India gave notice to the petitioner to show cause why his election as President should not be set aside. The notice reads as under:

"Sub: Election of the Office of the President, Dental Council of India held on 6.11.1995.

The following members were present :-

1. Prof (Dr.) N. Sridhar Shetty: Acting President. 2. Dr. V.P. Bansal: Add. D.G. 3. Dr. L.K. Gandhi Member 4. Dr. S.K. Sen -do- 5. Dr. Hari Prakash -do- 6. Dr. R.P. Vaish -do- 7. Dr. S.P. Rajan -do- 8. Dr. P.R. Roddi -do- 9. Dr. N. Rajeeva Shetty -do- 10. Dr. H.S. Dhooria -do- 11. Dr. C. Bhaskar Rao -do- 12. Dr. N.T. Venkateshaiah -do- 13. Dr. R.K. Bali: -do- 14. Dr. (Mrs.) Amrit Tewari -do- 15. Dr. Pradip Jayana -do- 16. Dr. K.S. Nagesh -do- 17. Dr. (Mrs.) Shivrathna C. Savadi -do- 18. Dr. B. Suresh Chandra -do- 19. Dr. N. Gnanasundram -do- 20. Dr. (Mrs.) Vijaya Sreenivas -do- 21. Dr. G.R. Bhat -do- 22. Dr. V.P. Jalili -do- 23. Dr. R.N. Singh -do- 24. Dr. R.P. Singh -do- 25. Dr. T.K. Saha -do- 26. Dr. S.S. Dua -do- 27. Dr. S. Bhattacharyya -do- 28. Dr. O.P. Nar -do- 29. Dr. S.R. Bhuyan -do- 30. Dr. S.K. Dutta -do- 31. Dr. V.K. Hazarey -do- 32. Dr. (Mrs.) Mohini Puri -do- 33. Dr. V.K. Grover -do- 34. Dr. (Mrs.) Manju Dutta -do- 35. Dr. T. Samraj -do- 36. Dr. R.K. Singh -do- 37. Dr. B.K. Chaudhary -do- 38. Dr. A.C. Bhuyan -do- 39. Dr. P.D. Bora -do- 40. Dr. V.K. Gupta -do- 41. Dr. R.S. Patharia -do- 42. Dr. Satish Chandra -do- 43. Dr. O.N. Kapoor -do- 44. Dr. P.V. Diwanji -do- 45. Dr. Sandesh Mayekar -do- 46. Dr. K.P. Kamat -do- 47. Dr. C.P. Govila -do- 48. Dr. Tara Singh -do- 49. Dr. Ravindra Ratolikar -do- 50. Dr. S.V. Bhagwat -Member- 51. Dr. K.G. Nair -do- 52. Dr. Jyothindra Kumar -do- 53. Dr. N.K. Gandhi -do- 54. Dr. B.P. Singh -do- 55. Dr. H.R. Prem sachdeva -do- 56. Dr. K.N. Velayudhan Nair -do- 57. Dr. N.S. Rajeevan -do- 58. Dr. B. Srinivasan -do- 59. Dr. C.A. Desai -do- 60. Dr. H.H. Hathi -do- 61. Dr. P.M. Jadhav -do- 62. Dr. Girish J. Parmar -do- 63. Dr. K.S. Bhat -do-

A.L. Miglani, Secretary

To condole the demise of Prof. (Dr.) B. Sri Rama Murthy of Hyderabad.

Before transacting any business, the Acting, President requested the Members of the Council to observe one minutes silence on demise of Prof. (Dr.) B. Sri Rama Murthy, Principal, HKES, Dental College, Gulbarga who was the member of the Dental Council of India as well as member of the Executive Committee of the council, the House observed one minute's silence in the memory of the departed soul. The House also decided to send condolence message to the family of Prof. (Dr.) B. Rama Murthy.

The Secretary read out the names of the valid members of the Dental Council of India to be present in the meeting as per the directives of the Acting President of the Council. The House unanimously approved the membership list announced by the Secretary.

I am directed to say that in pursuance of Delhi High Court's order dated 30.9.96 in Writ Petition number 2342/1996 filed by Dr. L.K. Gandhi praying quashing of the election of the Office of the President of Dental Council of India held on

6.11.1995, an Inquiry Officer was appointed by this Ministry to look into the matter and to submit the report for taking appropriate action in the matter.

2. The Inquiry Officer has found that the election of the President of Dental Council of India had infirmities including nonobservance of normal procedure expected in an election. A copy of the enquiry report is enclosed. In view of this report and as per the provisions of Section 20 of Dental Council (Election) Regulations, 1952, you are hereby given an opportunity of stating the reasons as to why this election held on 6.11.1995 for the Office of the President, Dental Council of India should not be set aside. You are directed to submit your reply within two weeks from the date of the issue of this show cause notice. If no reply is received within the stipulated period, it would be presumed that you have nothing more to say and a decision will be taken by the Central Govt. In the matter without any further communication to you in this regard."

16. On 3.6.1997 the petitioner sent his reply:-

"Sub: Election for the office of the President, Dental Council of India held on 6.11.1995.

Please refer to your letter No. V. 12025/9/96PMS, dated 21.5.1997 on the subject cited above.

2. I have gone through the Inquiry Report and find that the Inquiry Officer has found certain "so called" infirmities in the election of the President of Dental Council of India held on 6.11.1995 and which have been discussed in paras 5, 6 and 9 of his Report under the following three headings:

(i) Eligibility of Dr. Ravindra Ratolikar and Dr. V.K. Gupta;

(ii) voting by Dr. V.P. Bansal, Addl. Director General Health Services;

(iii) Inclusion of a large number of members in the voting list in the last minute.

My comments with regard to the aforesaid three findings of the Inquiry Officer are as under:-

3. Eligibility of Dr. Ravindra Ratolikar and Dr. V.K. Gupta.

(i) In Sub para (v) of para 5 of the Report, it has been held that Dr. V.K. Gupta and Dr. Ratolikar who were elected w.e.f. 2.12.94 and 17.10.95 respectively and whose elections were not notified by the Central Government in the Gazette till 6.11.95 were not eligible to vote on 6.11.95. In sub para (iv) of the same para, the Inquiry Officer has expressed the view that Delhi High Court in CWP 3012/95 Dr. Prem Sachdeva Vs. Union of India, had held that publication of the result was necessary in case of elected person u/s 3(a) of the Dentists Act, 1948 (hereinafter referred to as the Act).

(ii) In this connection, your kind attention is drawn to Section 7 of the Act which mandates that the President shall be elected by the Members of the Council from among themselves. It, Therefore, follows that each and every member of the

Council has a right to vote in the election of the President and denial of right to vote in respect of any member of the Council would be in blatant violation of that Section. Moreover the right to vote granted by this Section is unfettered and without any restrictions.

(iii) Section 6 of the Act provides that an elected or nominated member holds office for a term of five years from the date of his election or nomination or until a successor has been duly elected or nominated, whichever is longer. It is, Therefore, clear that an elected person becomes a member of the Council from the very date of his election and all rights and privileges of a member accrue to him from that date. To be precise, the right to vote in the election of the President vested by Section 7 of the Act in a member of the Council becomes available to an elected person from the date of his election and this right is to dependent on any other condition.

(iv) In respect of members of the Council elected by the States under Clause (9) of Section 3 of the Act, regulation 19 of the Dental Council (Election) Regulations, 1952, no doubt, requires the Returning Officer to report the result and date of election to the State Government who, in turn, is required to communicate it to the Govt. of India. The regulation further casts a mandatory obligation on the Central Government to publish the results in the Gazette of India.

(v) The question that arises for consideration is whether rights and privileges of a person elected to the Council that accrue to him as a member of the Council get affected or curtailed in any manner in case of failure of the Central Govt. to publish the result in the Official Gazette? Regulations do not provide any adverse consequences in case results have not been published by the Central Govt. as mandated by Regulation 19. Further, as the beginning of the tenure of a member of the Council has neither been linked to the publication of results by Central Govt. nor made dependent or contingent upon such publication of results, the publication or otherwise of results has no effect on the beginning of tenure of a Member which begins from the date of his election by virtue of Section 6 of the Act. The rights of a person elected to the Council that accrue to him as Member of the Council, including the right to vote at election of the President, Therefore, are not affected in any manner whatsoever due to failure of Central Govt. to notify the result in the official Gazette.

(vi) The very fact that beginning of the tenure of a member of the Council is linked to the date of his election and not to the date of Gazette Notification publishing the result of the election clearly shows that notification mandated by Regulation 19 (it ought to be noted that the Act does not require publication of results by Gazette Notification) is only for the purpose of general information and it does not affect the rights of a member in any manner. In practice also, the Central Govt. while issuing notification has also been indicating the date of election of the member, and tenure of the member is determined with reference to his date of election and not with reference to the date of publication of result

in the Official Gazette.

(vii) The Ministry of Health, Govt. of India, vide their letter No. F.6-2/52-MI dated 16th February, 1953, while clarifying the position with regard to Section 3 of the Act had themselves stated that the persons who have been declared elected by the Returning Officer in accordance with Regulation 17 of the Dental Council (Election) Regulations, 1952 are entitled to attend the meetings of the Council irrespective of the fact whether their election has or has not been notified in the Official Gazette. A copy of the said letter of Ministry of Health is at Annexure-I of this letter.

(viii) The reliance place by the Inquiry Officer on the Judgment in CWP 3012/95-Dr. Prem Sachdeva Vs. Union of India & Others is totally misconceived and misplaced. The Inquiry Officer in sub para (iv) of para 5 of the report has observed that the Delhi High Court in the said case has held the view that notification is necessary in respect of members covered u/s 3(a) of the Act. It is not understood as to how the aforesaid observation of the Hon''ble High Court has led the Inquiry Officer to conclude that unless such a Notification is issued, a person declared elected would not be entitled to vote in the election of the President of the Council.

(ix) It is not disputed that the Regulation 19 casts a mandatory duty on the Central Govt. to publish the results of election in case of members of Council elected u/s 3(a) of the Act an the Hon''ble Delhi High Court in Dr. Prem Sachdeva's case, however, did not dealt with the issue as to whether non publication of result by the Central Govt. in respect of a person declared elected u/s 3(a) of the Act, does in any manner, affect the membership of such a person or curtails his rights as a member in any way. In that case, Hon''ble High Court was not concerned with the persons elected u/s 3(a) of the Act. The issue in this case related to members nominated under Sections 3(b), (c), (d) and (e) of the Act, in respect of which regulations do not require issue of Gazette Notification by the Central Govt. and as such High Court rejected the contention that those persons could not act as members of the Council unless a notification was published by the Central Govt. in the Gazette. As the Hon''ble High Court in Dr. Prem Sachdeva's case did not decide the question as to whether non publication of the results in respect of members elected u/s 3(a) of the Act by the Central Govt. has any affect on the membership of such a person, the reliance placed by the Inquiry Officer on this case to hold that member declared elected u/s 3(a) of the Act would have no voting rights unless their election was notified by the Central Govt. is not only wholly misplaced and misconceived but is also totally illogical and without any basis whatsoever.

(x) The issue as to whether membership of a person declared elected u/s 3(a) of the Act is affected in any manner because of non-publication of result by the Central Govt. was, on the other hand ,decided by the Hon''ble High Court of Delhi in C.W.P. No. 4055 of 1975 in the case of Dr. K.P. Kamat Vs. Union of India & Others. In that case Dr. Kamat was declared elected u/s 3(a) of the Act from the

State of Goa but the results of election were not notified by the Central Govt. in Official Gazette. The Hon"ble High Court by an interim order dated 3.11.95 allowed Dr. Kamat to act as a member of the Dental Council for all intents and purposes. The said interim order was made absolute by the High Court by its subsequent order dated 10.3.97 after the Hon"ble High Court took note of the communication by Ministry of Health dated 16th February, 1953 wherein they have themselves inter alia stated that persons who had been declared elected by the Returning Officer in accordance with Regulation 17 of the Dental Council (Election) Regulations, 1952 were entitled to attend the meeting of the Council irrespective of the fact whether their election had or had not been notified in the Official Gazette. This issue has, Therefore, been finally and conclusively settled by the Hon"ble High Court. In Dr. Kamat's case. A copy of the said orders of Hon"ble High Court date 3.11.95 and 10.3.97 in Dr. Kamat's case are placed respectively at Annexure-II and Annexure-III of this letter.

(xi) In view of the fact that by virtue of Section 6, a person becomes Member of the Council from the date of his election and u/s 7 of the Act, each and every member of the Council has an unfettered right to vote in the election of the President of the Council, it is clear that no person who is declared elected to the Council can be denied his right to vote in the election of the President held after his date of election, irrespective of the fact whether the Central Govt. has or has not published the result in the Official Gazette. This position was affirmed by the Ministry of Health themselves vide their letter dated 16th Feb., 53 and upheld by the Hon"ble High Court of Delhi in Dr. Kamat's case.

(xii) The findings of the Inquiry Officer that Dr. V.K. Gupta and Dr. Ratolikar who were elected u/s 3(a) of the Act were not entitled to vote in the election of the President being in blatant violation of Section 7 of the Act read with Section 6 thereof, to the judgment of Delhi High Court in Dr. Kamat's case and also being contrary to the position stated by the Ministry of Health themselves in their letter dated 16th February, 53 is grossly erroneous, totally incorrect and legally untenable. The voting by the said two members, on the other hand, being in conformity with Section 7 read with Section 6 of the Act was perfectly valid, just and legal. In fact, had been members been denied voting rights, that would have been violative of Section 7 of the Act read with Section 5 thereof and would have rendered the election void and illegal.

4. Voting by Dr. V.P. Bansal, Addl. D.G.H.S.

(i) In sub-para (iv) of para 6 of the Report, the Inquiry Officer has held that Dr. V.P. Bansal, Addl. D.G.H.S. was not eligible to vote in the said election. With regard to sub regulation (2) of Regulation 27 of the Dental Council of India which provides that in the absence of the Director General of Health Services a nominee of the Director General of Health Services can attend the meetings of the Council, the Inquiry Officer in sub para (iii) of para 6 of the Report has observed that Regulation 27 also provides that four representatives of the Press can attend the meetings of the Council at the discretion of the President on

permits from the Secretary. It has further been held by the Inquiry Officer in this sub-para that provision under said regulation cannot be construed "as the nominee of the Director General of Health Services cannot only attend the meeting but also vote during the election."

(ii) It is respectfully submitted that the reasoning adopted by the Inquiry Officer to conclude that despite a specific regulation permitting nominee of D.G.H.S. to attend the meetings of the Council, Dr. Bansal was not eligible to vote is fallacious, devoid of merit and is totally misconceived. It may be noted, at the outset, that u/s 3(g) of the Act, the Director General of Health Services is the ex-officio member of the Dental Council of India and, Therefore, anybody officiating as D.G.H.S. would be a member of the Council as in this particular case, the membership is not by name but by designation. In the Inquiry Report, it has not been stated as to whether Dr. Bansal attended the meeting as in the absence of D.G.H.S. he was himself officiating as D.G.H.S. or he has attended the meeting as nominee of D.G.H.S. under Regulation 27(2). If Dr. Bansal was himself officiating as D.G.H.S. on the day of election, his attendance in the meeting was perfectly legal and justified by virtue of section 3(g) itself. In other case also, as the analysis in subsequent paras would reveal, the attendance and voting by Dr. Bansal was perfectly legal and valid.

(iii) It may be noted that Regulation 27(2) has been specifically enacted to provide that in the absence of the Director General Health Services, A nominee of the Director General of Health Services can attend the meetings of the Council. The said regulation does not lay down any fetters or restrictions on rights of the nominee while attending such meetings. Obviously if any restrictions were intended, those would have been specifically laid down in the regulations itself and when no such restriction is laid, it is incorrect to assume that the nominee is having only restricted right while attending the meetings of the Council.

(iv) The Inquiry Officer has further erred in holding that Regulation 27 even permits 4 representatives of the Press to attend the meetings of the Council and in equating the representatives of Press with the nominee of D.G.H.S. Obviously the Inquiry Officer has failed to note the difference in the wordings of sub regulation (1) and sub-regulation (2) of the said Regulation 27. He has also failed to appreciate that if different wordings have been used in the two sub-regulations of the same Regulation, both cannot be intended to convey the same meaning.

(v) A bare reading of sub-regulation (1) of Regulation 27 makes it clear that this sub-regulation only provides that four representatives of Press may be admitted as visitors (which is not the same thing as attending the meeting) in the meetings of the Council and they would be required to withdraw if President decides to hold the meetings in camera. Under sub-regulation (2) of the said Regulation, the nominee of D.G.H.S., on the other hand, has an unfettered right to attend the meetings of the Council in the absence of D.G.H.S. Admitting as visitors 4 representatives of the Press is definitely not analogous to attending the

meeting by the nominee of D.G.H.S. and the Inquiry Officer has gravely erred in equating the two cases.

(vi) It is stated that in case the intention of the regulation was that the nominee of D.G.H.S. would not exercise certain rights such as right to vote, it would have been expressly so provided in the regulation. The Inquiry Officer is incorrect in reading restrictions on the rights of the nominee and holding that he had no right to vote when, in fact, no such restrictions exist in the regulations on the right of the nominee.

(vii) It may be stated that when a person is entitled to attend a meeting, he is also competent to vote in the election if elections are on the agenda of the meeting. It may further be pointed out that when the Ministry of Health vide its letter dated 16th February, 1953 had stated that persons who had been declared elected to attend the meetings of the Council irrespective of the fact whether their election has or has not been notified, the Central Govt. definitely meant that such persons would act as members of the Council for all intents and purposes including the right to vote in elections. The High Court of Delhi in Dr. Kamat's case had also construed the said letter of the Ministry of Health in the same manner. Obviously, the word "attend" cannot be construed to mean differently when it occurs in Regulations 27(2) and it necessarily means for all intents and purposes.

(viii) It may also be noted that as the victory margin in the election of the President of the Council was more than 4 votes, a single vote by Dr. Bansal would not have affected the outcome of the results of the election in any manner and, Therefore, this is more a matter of academic interest rather than being of any practical significance insofar as elections to the office of the President of the Council are concerned. It is also stated that no one has raised any objection to the voting by Dr. Bansal during the elections and hence such objections need to be rejected even on this short ground.

(ix) In view of the aforesaid position, the findings of the Inquiry Officer that Dr. Bansal did not have voting right is erroneous and legally untenable.

5. Inclusion of a large number of members in the last minute.

(i) The Inquiry Officer in sub-para (iv) of para 9 of the Inquiry Report has held that inclusion of large number of members in the last minute was not in accordance with the established practice and procedure in any election process, but he has not given specific number or the names of the So called "large number" of members so included. Citing Regulations 3 and 4 of the Dental Council (Election) Regulations, 1952 which require preparation and finalisation of preliminary electoral rolls and fixation of dates for various stages of election to State Dental Councils u/s 3(a) of the Act, the Inquiry Officer appears to hold that, a similar exercise was also required for holding election to the office of the President of the Dental Council of India.

(ii) At the outset, it is pointed out that Regulations (3) and (4) of the Dental Council (Election) Regulations 1952 relate to elections of members of Dental Council elected u/s 3(a) of the Act and have no application in respect of election to the office of President of the Dental Council of India. In fact, Dental Council (Election) Regulations, 1952 only prescribe the manner in which elections of members of the Dental Council are to be conducted and these have no application insofar as elections to the office of the President of Dental Council are concerned.

In fact, no rule or regulations have yet been framed to prescribe the manner of election to the office of the President. The Inquiry Officer also concedes that provisions relating to electoral rolls relate only for election to members of Dental Council u/s 3(a) of the Act. No legal infirmity has thus been shown by the Inquiry Officer in this para of his Report.

(iii) We may, however, point out that in view of the existing provisions of the Act, it is not possible to prepare any electoral rolls by fixing time schedule for various stages of preparation of the electoral rolls. The scheme of the Act, simply excludes any such preparation of the electoral rolls.

(iv) We have already analysed Sections 6 and 7 of the Dentists Act, 1948, in some detail in para 3 of this letter. As pointed out in said para, by virtue of Section 6, a person becomes a Member of the Dental Council as soon as his result is declared, i.e. from the date of his election and u/s 7 of the Act each and every member has a right to vote in the election to the office of the President of the Dental Council. In view of these statutory provisions any person who gets elected to the Council by the time the election to the office of the President is held, cannot be denied right of vote at the election. Denial of voting right to any such member would be in contravention of Section 7 of the Act and may render the entire election as void and illegal. As such, the list of Members as updated till the time the election of the President is held is the only legally valid list of voters for election to the office of the President. In fact as no elector can be denied right to vote on the ground that he has been elected after a particular date but before the election of the President, it is clear that no time schedule can be laid for preparation of electoral rolls, and list of members would need to be updated till the election is held to meet the requirements of Section 7 read with Section 6 of the Dentists Act, 1948.

(v) In fact election to the office of President of the Dental Council of India is like election to the office of Speaker of Lok Sabha who is elected by members of Lok Sabha from amongst themselves. In the election to the office of speaker as all members of Lok Sabha as on the date as the election of Speaker are entitled to vote, no electoral rolls are prepared as it is not feasible to do so. The list of members of Lok Sabha as updated till the date of election of speaker is only valid list of electors. The situation in case of elections to Dental Council being analogous to the election of Speaker, it is neither feasible nor possible to prepare the electoral roll in the manner envisaged by the Inquiry Officer. Such an

exercise would, in fact, contravene Sections 6 and 7 of the Act.

(vi) In view of the aforesaid statutory position, updating list of Members by including in it new Members as got elected to the Council till the date of election of the President was, in fact, a necessary legal requirement and in case new members were not so included, it may have rendered the entire election as void being in violation of Section 7 of the Act read with Section 6 thereof.

(vii) It is, however, stated that prior to the election the names of new members were read out and unanimously approved by the House. No protest or demur was raised in respect of any new Member.

(viii) In fact, only such electors participated in the election who were competent to do so. It may be noted that it is not the contention of even Dr. Gandhi that any person who was not a member of the Dental Council had voted; and as long as Members have voted, it is in conformity with Section 7 of the Act and hence is perfectly valid and legal.

(ix) In view of the position stated, above, it is clear that inclusion of new members was a necessary legal requirement and but for such inclusion, the entire election would have been void. The observations made by the Inquiry Officer in para 9 of the Report appear to have been made by him without proper appreciation of the Scheme laid down under the Act for election to the office of President of the Dental Council and are without any merit or substance whatsoever.

6. In the light of the position as explained in paras 3 to 5 above, it is clear that the Inquiry Officer has taken a grossly unfair and erroneous view in finding infirmities on aforesaid three grounds. The findings of Inquiry Officer being contrary to the express provisions of the Dentists Act, 1948 and the Regulations made there under as also to the law laid by courts are misconceived, erroneous, without any merit or substance and are not legally tenable and, Therefore, needs to be rejected. The Inquiry Officer has also not shown if the result of the election was materially affected due to "so called" infirmities. As the election was held in accordance with statutory provisions of the Dentists Act, 1948 and as per the established practice and procedure being followed by the Dental Council of India since its inception, same was perfectly valid, legal and proper and hence there is no question of setting aside the election. The representation of Dr. L.K. Gandhi on the other hand is misconceived, devoid of any merit or substance and deserves to be rejected.

7. I shall further request you that I should also be afforded an opportunity to explain in person my case before you on a date and time convenient to you."

17. On 6.11.1997 the Govt. of India passed the order accepting the report of the Inquiry Officer dated 24.12.1996 :-

"Whereas the election to the Office of President, Dental Council of India (DCI) was held on 6.11.1995 and there were three contestants in the said election

namely Dr. R.K. Bali, Dr. N. Sridhar Shetty and Dr. L.K. Gandhi.

2. And whereas the two contestants, namely, Dr. Bali and Dr. Shetty secured equal number of votes i.e. 22 each and Dr. L.K. Gandhi got 18 votes and whereas there was a tie of votes, the announcement of the result was reserved by the returning officer and the DCI vide its letter No. DE-108-95/204 dated 30.11.1995, referred the matter to the Central Government for decision because there was no clear provision in the Act or in the Regulations, for resolving the matter.

3. And whereas Dr. L.K. Gandhi submitted a representation dated 13.11.1995 to the Central Government u/s 5 of the Dentists Act, 1948, challenging the validity of the above said election on various grounds.

4. And whereas Dr. L.K. Gandhi filed a Writ Petition No. 2342/96 in the High Court of Delhi Praying for quashing the election etc. The Hon'ble Court vide its order dated 30.9.1996 directed the Union of India to consider the representations of the petitioners in accordance with the law within four weeks from 30.9.1996.

5. And whereas to consider the representations of Dr. L.K. Gandhi, the Central Government appointed Shri N.M. Perumal, Deputy Secretary in the Ministry of Health & Family Welfare as an Enquiry Officer vide order No. V. 12025/9/96-PMS dated 29.10.1996 to enquire into the allegations made by Dr. L.K. Gandhi and to submit a report to the Central Government.

6. And whereas the Enquiry Officer, after inquiring into the allegations by giving due notices to all the concerned persons and after taking into consideration the oral and written evidence and representations submitted by them, submitted his report on 24.12.1996, concluding that the election to the office of President, DCI, held on 6.11.1995 had infirmities including non observances of normal procedure expected in an Election.

7. And whereas the Central Government issued show cause notices to all the concerned to show cause why the election to the Office of President, DCI held on 6.11.1995 should not be set aside as envisaged in Regulation 20 of the Dental Council (Election) Regulations, 1952.

8. And whereas taking into consideration the finding contained in the report of the Enquiry Officer and also the replies received from the concerned persons in response to the show cause notices, the Central Government has come to the decision that the proper procedure for holding the election to the Office of President has not been followed and now Therefore the Central Government hereby set aside the election to the Office of President, DCI held on 6.11.1995."

18. On 12.11.1997 the writ petition was presented in this Court.

19. One Dr. Bhaskar Rao filled C.W.P. 491/98 challenging the election to the office of Vice President. That was dismissed by the learned Single Judge of this

Court and the same is reported in C. Bhaskar Rao (Dr.) Vs. Union of India and Others, .

20. L.P.A. 435/98 was filled against that order. On 17.12.1998 the L.P.A. was dismissed by a Division Bench of this Court. The fourth respondent herein, who was one of the respondents in L.P.A., filed SLP in the Supreme Court with reference to observations made by the learned Single Judge. On 24.2.1999 the Supreme Court dismissing the SLP granted liberty to Dr. L.K. Gandhi to urge all the points available to him in law in this writ petition.

21. It is not necessary to elaborately deal with the pleadings of the parties in this case as the questions involved are very short and for the purpose of deciding those questions the facts need not be related. In the writ petition with reference to the points finding given by the Inquiry Officer, with reference to the eligibility of Dr. Ratollikar and Dr. V.K. Gupta, it is stated in Ground L:-

"BECAUSE the findings of the I.O. that Dr. V.K. Gupta and Dr. Ratollikar who were elected u/s 3(a) of the Act were not entitled to vote in the election of the President being in blatant violation of Section 7 of the Act read with Section 6 there of, the judgment of Delhi High Court in Dr. Kamat's case and also being contrary to the position stated by Ministry of Health themselves in their letter dated 16th February, 1953 is grossly erroneous, totally incorrect and legally untenable. The voting by the said two members, on the other hand, being in conformity with Section 7 read with Section 6 of the Act was perfectly valid, just and legal. In fact, had the two members have been denied voting rights, that would have been violative of Section 7 of the Act read with Section 5 thereof and would have rendered the election void and illegal."

22. With reference to the right of Dr. V.P. Bansal to vote the point urged in ground M is :-

"BECAUSE the Ld. I.O. erred in holding that Dr. V.P. Bansal, Additional DGHS was not eligible to vote in the said election. The reasoning adopted by the I.O. to conclude that despite a specific regulation permitting nominee of DGHS to attend the meetings of the Council. Dr. Bansal was not eligible to vote is fallacious, devoid of merit and is totally misconceived."

23. Dealing with the participation in the election by Dr. L.K. Gandhi, the fourth respondent herein, in Ground ZG it is stated:-

"BECAUSE Dr. Gandhi having participated in the elections on the basis of the voting list dated 6.11.1995 without raising any objection whatsoever to participation of Dr. Ratollikar, Dr. Gupta and Dr. Bansal in the meeting and voting at the meeting, when he himself was a candidate and having thus availed himself of the chance of their voting in his favour; is debarred and estopped from challenging their participation in the voting at the meeting after he lost the election."

24. The view taken by the Inquiry Officer about inclusion of members in the last

minute and that there was no proper electoral roll for the purpose of election, it is stated in the writ petition that the fourth respondent did not raise that point in his representation and the members had participated in the election and they had accepted the same without any protest and the electoral roll was affixed in the office of Dental Council of India and all the members were aware of that fact and that had not in any way materially affected the result of the election warranting the setting aside of the election at the instance of the fourth respondent Dr. L.K. Gandhi.

25. The respondents had filed replies seeking to sustain the view taken by the Inquiry Officer in his report. Under these circumstances, the questions that arise for consideration to decide about the validity of the report of the Inquiry Officer and the order of the Government of India are:-

1. Whether Dr. Ratolikar and Dr. V.K. Gupta were eligible to participate in the meeting on 6.11.1995 when their election to the Dental Council had not been notified in the Gazette?
2. Whether Dr. V.P. Bansal, nominee of the Director General of Health Services, was entitled to vote in the meeting?
3. Whether the election could be set aside on the ground that there was no electoral roll, as stated by the Inquiry Officer?

26. The learned senior counsel for the petitioner Mr. Madan Bhatia relying upon the observations made by the learned Single Judge in C. Bhaskar Rao (Dr.) Vs. Union of India and Others, submitted that the Central Government had no jurisdiction to deal with the representation made by the fourth respondent Dr. L.K. Gandhi on 13.11.1995. In other words, the learned senior counsel submitted that the election to the office of President was not amenable to the jurisdiction of the Government of India u/s. 5 of the Dental Council Act, 1948.

27. The learned counsel for the fourth respondent Mr. Dhruv Mehta submitted that the view taken by the learned Single Judge would not be correct in law in view of the decisions of the Supreme Court. In view of my decision, on the other questions I do not propose to deal with the point decided by the learned Single Judge as I am of the view that is not necessary for the purpose of this case. Why I am mentioning this is that if that point, referred to by the learned Single Judge is necessary for the decision of this case and if I do not agree with that view then I have to refer the matter to a D.B.

28. The first question is whether Dr. Ratolikar and Dr. V.K. Gupta, who were admittedly elected to the Dental Council, could be said to be not eligible as their election was not notified in the Gazette.

29. The learned senior counsel for the petitioner Mr. Madan Bhatia submitted that the view taken by the Inquiry Officer and approved by the Government, that the two members Dr. V.K. Gupta and Dr. Ratolikar were not eligible to vote at the general body meeting on 6.11.1995 is not sustainable in law. The learned senior

counsel submitted that the Inquiry Officer and the Government had completely ignored the effect of the provisions of Regulation 19 of Dental Council Election Regulation, 1952 and the provisions of Sections 3, 6 and 7 of the Dental Council Act, 1948. The learned senior counsel submitted that the Inquiry Officer has considered the point with reference to inclusion of large number of members in the last minute which was not urged by the fourth respondent Dr. L.K. Gandhi in his representation.

30. The Central Government has no jurisdiction to adjudicate on the matter on the basis of the representation given by the fourth respondent Dr. L.K. Gandhi u/s. 5 of the Dentists Act, 1948.

31. The learned senior counsel submitted that the view taken by the Inquiry Officer and accepted by the Government of India that Dr. V.P. Bansal, Addl. Director of General Health Services was entitled to participate in the meeting, who is a nominee of Director of General Health Service, he has no right to vote and they had taken a wrong view of Regulation 27. The learned counsel for the fourth respondent Mr. Dhruv Mehta submitted that the publication of the result of the election to the Dental Council under Regulation 19 is a sine quo non for any member of the Dental Council to become eligible to vote. The learned counsel relied upon the judgment of the Division Bench of this Court in Dr. H.R. Prem Sachdeva and Others Vs. Union of India, 1995 3 AD 1061.

32. The learned counsel, with reference to the right of Dr. V.P. Bansal, Addl. Director of General Health Services to vote at the meeting, submitted that as a nominee of the Director General of Health Services Dr. V.P. Bansal was no doubt entitled to participate but under Regulation 27 there is nothing to show that he has got the right to vote at the meeting.

33. Regarding the inclusion of the members in the last minute, the learned counsel Mr. Dhruv Mehta submitted that there was no procedure followed by the Dental Council in including the members and in the last minute members have been permitted to participate in the meeting and according to the learned counsel the view taken by the Inquiry Officer is perfectly imperfectly valid in law.

34. The learned counsel submitted that Central Government has got jurisdiction u/s. 5 and that could be evident from a proper interpretation and the construction of the provisions of the Dentist Act, 1948 and Dental Council Election Regulation 1950.

35. With reference to the first point about eligibility of Dr. Ratolikar and Dr. V.K. Gupta the relevant provisions of the Dentist Act and the Regulations have to be noticed.

36. Section 3 of the Dentists Act, 1948 provides for the constitution and composition of Council. The same reads as under :-

"Section 3 of Dental Council of India:

3. 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, by -

(a) Principals, Denas, 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, 1 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, "State" 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 practicing 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."

37. Section 6 refers to the time of office of Dental Council. The election of President and Vice-President is provided in Section 7, which reads as under :-

"7.(1) The President and Vice-President of the Council shall be elected by the members thereof from among themselves :

Provided that on the first constitution of the Council and until the President is elected, a member of the Council nominated by the Central Government in this behalf shall discharge the functions of the President:

Providing further that for five years from the first constitution of the Council, the President shall, if the Central Government so decides, be a person nominated by the Central Government who shall hold office during the pleasure of the Central Government, and where he is not already a member, shall be a member of the Council in addition to the members referred to in Section 3.

(2) An elected President or Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as member of the Council, but subject to his being a member of the Council, he shall be eligible for reelection."

38. Regulation 19 of the Dental Council (Election) Regulations, 1952 states that how the result is published. Regulation reads as under :-

"Publication of results. The Returning Officer shall report the result and date of the election to the State Government, who in turn shall communicate the information to the Government of India. The Central Government shall then publish the result in the Gazette of India and the State Government shall thereafter republish the notification of the Central Government in the Official Gazette of the State concerned."

39. Under this Regulation it could be seen that the Central Government is to publish the result in the Gazette of India to be followed up by a Notification by the State Governments.

40. The submissions made by the learned senior counsel Mr. Madan Bhatia that the publication of the result in the Gazette of India is only an administrative part of the work of the Dental Council and the non publication would not disentitle the elected member from participating and voting in the election of President and Vice-President. Clarifying the position, the Government of India has issued the letter on 16.2.1953 and on 2.7.1990. The learned senior counsel submitted once following a democratic process a person had been elected to the Council, he becomes entitled to participate in the Dental Council meeting and vote in the meeting at the time of election, the publication which is only a routine affair and non-publication cannot stand in the way of the elected member participating in the deliberations and the election held by the Dental Council. The learned senior counsel for this purpose relied upon an order passed by a Division Bench of this Court in C.W.P. 4055/95 in the case of Dr. K.P. Kamat Vs. Union of India & Others on 3.11.1995 while considering the relief prayed for by the writ petitioner for interim relief. The Division Bench permitted Dr. K.P. Kamat to participate in the meeting even though his election has not been notified in the Gazette.

Subsequently, on 10.3.1997 a Division Bench of this Court confirmed the earlier order. Therefore, according to the learned senior counsel Mr. Madan Bhatia the position is clear that non publication in the Gazette of India and Regulation 19 would not and cannot bar the elected person for voting in the election when the Council has to elect the President and the Vice-President.

41. The learned counsel for the fourth respondent Mr. Dhruv Mehta relied upon a judgment of a Division Bench of this Court in Dr. H.R. Prem Sachdeva Vs. Union of India & Others, 1995 3 AD 1061. The learned counsel Mr. Dhruv Mehta submitted no doubt the circular issued by the Government on 16.2.1953 enables an elected member to participate in the meeting but it does not state that such a person can also vote. The learned counsel submitted that whatever be the view of the Government of India this Court has to interpret the Regulation concerned and that cannot depend upon the opinion given by the Central Government by the above circular. The learned counsel relied upon for this purpose he judgment of the Supreme Court Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others, . The learned counsel referred to paragraph 14 at page 1006.

42. Dealing with Dr. K.P. Kamath's case where orders were passed by this Court on 3.11.1995 and 10.3.1997 the learned counsel submitted the point should be confined to the facts of that case. Besides, the Division Bench had only passed an interim order and that cannot prevail over the view taken by this Court in 1995 3 A.D. 1061 (supra).

43. Immediately, we have to notice the decision of this Court in 1995 3 A.D. 1061.

The facts are :-

"The petitioners numbering seven and all dentists have filed this petition (CWP No. 3021/95) under Article 226 of the Constitution seeking restraint on the holding of the meeting of the Dental Council of India at Bangalore on 8, 9 and 10 September 1995 as per notice dated 30th July, 1995 issued by the Secretary, Dental Council of India. The petitioners also want appointment of a nominee of the Central Government as Administrator of the Dental Council of India till proper elections to the Dental Council and to the Executive Committee are held. Various other prayers are also sought which we will consider as we proceed with the judgment. There are three respondents. The third respondent was the Vice-President and in the absence of the President he performs the functions of the President.

In Writ Petition (CWP No. 3023/95) filed by Dr. Pradip Jayna, also a dentist, there is challenge to the communications dated 2nd February, 1995 and 8th May, 1995 of the second respondent as well as to the order dated 31st July, 1995 of the first respondent. Restraint is also sought on the respondents from preventing the petitioner to act as a member of the Dental Council.

Petitioners have contended that the last meeting of the Dental Council was held

in Delhi on 13/14 December, 1994, and the third respondent the Acting President, was not authorised to fix the venue and the date of the next meeting of the Dental Council which he did so unauthorisedly fixing the meeting at Bangalore for 8 to 10 September, 1995. Before we discuss the rival contentions it may be appropriate to set out the relevant provisions of the Dentists Act, 1948 (for short "The Act") under which the Dental Council is constituted and the Regulations of the Dental Council of India and so also the Dental Council (Election) Regulations, 1952. Both the Regulations have been framed by the Dental Council of India with the approval of the Central Government u/s 20 of the Act. It is not disputed that the regulations are statutory."

44. The argument on behalf of the petitioners in CWP.3021/95 was:-

"Mr. Vikas Singh, learned counsel for the petitioners (CWP No. 3021/95), submitted that the Acting President, the third respondent had no right to fix the Dental Council meeting at Bangalore and that in the meeting of the Dental Council held on 13/14 December, 1994 he was authorised merely to take decision only on legal matters, but that he had been acting in contravention of the decisions of the Dental Council and taking decisions in other matters as well for which he was not authorised. In any case, Mr. Vikas Singh, said that since draft minutes had been objected to and unless these minutes are corrected the Acting President could not be said to have been empowered to take any action. Mr. Vikas Singh said that various members of the Dental Council had either been wrongfully excluded or included in the Dental Council in contravention of the provisions of Section 3 of the Act by adopting wrong analogy with reference to some provisions under the Indian Medical Council Act. It was submitted that unless the names of the members either nominated or elected were notified by the Central Government they could not be said to have become members of the Dental Council. He said that the Secretary, Dental Council of India's note of December 1994 which we have reproduced above was irrelevant and was against the provisions of the Act and the Regulations."

45. On behalf of the petitioner in CWP 3023/95 it was submitted:-

"Mr. S.P. Kalra, learned counsel appearing of the petitioner (CWP No. 3023/95) submitted that the communications dated 2nd February, 1995 and 8th May, 1995 issued by the Central Government and that dated 31st July, 1995 issued by the Secretary, Dental Council of India, drawing authority from the above two communications, were not legal. He said Pradip Jayna continued to be the member of the Dental Council."

46. The Division Bench of this Court held:-

"We would, Therefore, hold that the Acting President, the third respondent could not fix the venue for the next meeting of the Dental Council of India at Bangalore unless the minutes of the meeting of 13/14 December, 1994 authorising him to decide the venue were confirmed after deciding its correctness in view of the objections raised by two of its members."

47. Regarding the necessity of Gazette Notification, the Division Bench held:-

"In our opinion to hold that in such cases of, nomination also publication of Gazette Notification is mandatory before they could be considered as members would amount to adding provisions in the Regulations by us which we are not competent to do. Besides, to deprive such members, nominated and/or elected as required under the Regulations to act as member of the Council till such notification is published would also amount to depriving them from exercising their right as members of Council without proper authority and sanction of law. 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 (e) 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."

48. The ratio laid down by the Division Bench is not applicable to the facts of this case. The question before the Division Bench was not with reference to the scope of Regulation 19 of the Dental Council (Election) Regulations, 1952. The Supreme Court in *Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others*, has only laid down the rule of construction and the ratio laid down therein is not applicable to the facts of this case.

49. The Inquiry Officer in his report dated 4.12.1996, which is already extracted, had expressed the view that Dr. V.K. Gupta and Dr. Ratolikar were not eligible to vote on 6.11.1995 as their election was not notified by the Central Government in the Gazette. The Inquiry Officer has relied upon the judgment of the D.B.1995 3 A.D. 1061 (supra). A scheme of the provision of the Dentists Act, 1948 and the Regulation would show that once election is held and that person is properly elected he is entitled to exercise all the rights and entitle to enjoy all the privileges that is attached to the elected office. The publication contemplated in Regulation 19 is only for record purposes. Invariably between the date of election and the publication there is an integrand period because of administrative reasons. Regulation cannot prevail over the provisions of the Act. Therefore, once a person is elected, as I had noticed above, the fact that his election had not been notified in the Gazette is not a matter of any moment. The ratio laid down in 1995 3 A.D. 1061 (supra) is entirely different and the question posed before this Court in that case was not the one that is now before me. Therefore, I am quite unable to accept the submission of Mr. Dhruv Mehta, supported by Mr. R.K. Tikku.

50. The next point to be considered is the right of voting by Dr. V.P. Bansal, Addl. Director General of Health Services. From Section 3 of the Dentists Act it could be seen that the Director General of Health Services is one of the members of the Council ex officio. Regulation 27 of the Dental Council of India, 1956 enables

the Director General of Health Services to nominate a person in his absence. Regulation 27 of Regulations of the Dental Council of India, 1956 reads as under:-

"(1) Four representatives of the Press at the discretion of the President or the person to whom he has delegated this power and other visitors, not exceeding four at a time, may be admitted to the meetings on production of permits from the Secretary. The Press representatives shall be required to obtain the previous approval of the Secretary to the publication of their report of the proceedings. The President may, at any time hold the meetings in camera in which case all visitors will be required to withdraw.

(2) In the absence of the Director General of Health Services a nominee of the Director General of Health Services, can attend the meetings of the Council."

51. The learned senior counsel Mr. Madan Bhatia submitted that the Director General of Health Services is a member of Dental Council of India by force of Section 3 of the Dentists Act, 1948. Therefore, his right to participate and vote in the meeting cannot be disputed by anybody. To meet a contingency that an incumbent holding the office of Director General of Health Services is for some administrative reasons not able to attend the meeting of the Dental Council he has been empowered to nominate a person under the Regulation. Therefore, the learned senior counsel submitted that the nominee by the Director General of Health Services would have the same rights and privileges as that of the Director General of Health Services and when Dr. V.P. Bansal had participated in the meeting by virtue of the nomination of Director General of Health Services it is as if the Director General of Health Services had attended and participated in the meeting and, Therefore, Dr. V.P. Bansal was well within his rights in exercising his franchise in the meeting held on 6.11.1995. The learned counsel Mr. Dhruv Mehta submitted that Section 3(g) of the Dentists Act, 1948 does not speak of nomination by the Director and the effect is, according to the learned counsel, the nominee does not become a member and, Therefore, the nominee acting on behalf of the Director General of Health Services would not be entitled to vote. The learned counsel Mr. Dhruv Mehta tried to draw an analogy to amplify his submissions from Section 176 of the Companies Act, 1956 where it is provided that the proxy will have right of vote. Section 176 of the Companies Act, 1956 reads as under :-

"Proxies.

176(1). Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the meeting:

Provided that, unless the articles otherwise provide-

(a) this subsection shall not apply in the case of a company not having a share capital;

(b) a member of a private company shall not be entitled to appoint more than one proxy to attend on the same occasion; and

(c) a proxy shall not be entitled to vote except on a poll.

(2) In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member.

If default is made in complying with this subsection as respects any meeting every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees.

(3) Any provision contained in the articles of a public company or of a private company which is a subsidiary of a public company, which specifies or requires a longer period than forthwith hours before a meeting of the company, for depositing with the company or any other person any instrument appointing a proxy or any other document necessary to show the validity or otherwise relating to the appointment of a proxy in order that the appointment may be effective at such meeting, shall have effect as if a period of fortyeight hours had been specified in or required by such provision for such deposit.

(4) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a member of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one thousand rupees:

Provided that an officer shall not be punishable under this subsection by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by the proxy.

(5) The instrument appointing a proxy shall -

(a) be in writing; and

(b) be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

(6) An instrument appointing a proxy if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles.

(7) Every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, any time during the business hours of the company, provided not less than three days notice in writing of the intention so to inspect is given to the company.

52. The learned counsel elaborating on the points submitted if what is contended for by the learned senior counsel for the petitioner is accepted Regulation 27 (2) would render itself vulnerable to an attack that it is beyond the powers given to the Council for making Regulation and as per the provisions of Section 20, regulations framed have to be consistent with the provisions of the Dentists Act, 1948. The learned counsel Mr. Dhruv Mehta referring to the judgment of the Supreme Court reported in AIR 1980 S.C. 983 the twin rights of right to elect and right to be elected or creations of statutory instruments and, Therefore, if the Statute does not empower a nominee to vote he would not have the right to vote and thus Dr. V.P. Bansal when he had no right to vote ought not to have allowed to participate in the election of 6.11.1995 and that had completely vitiated the election.

53. The Inquiry Officer in his report had given a very interesting reasoning. Under Regulation 27(1) four representatives of the Press can attend the meeting at the discretion of the President on permission from the Secretary. If the case of the Council was to be correct that nominee of the Director could vote then the representatives of the press also would have the right to vote. The Inquiry Officer had completely misdirected himself. There is difference between the nominee made by the Director by Virtue of Section 3(g), he being ex officio member and representatives of the Press attending the meeting for the purpose of covering the proceedings in the meeting. Because in the Regulation the category of representatives of the Press and the nomination to Director is found in one Regulation, no parity can be assumed in the role of the nominee and the Director and the representatives of the Press in exercising the power of vote. The Inquiry Officer has acted illegally in taking this view as his view runs counter to the statutory provision of the right of the Director General of Health Services being ex officio member u/s. 3(g) of the Dentists Act, 1948.

54. With reference to the inclusion of large number of members in the last minute, I find no substance in the submissions made by Mr. Dhruv Mehta. The reasoning given by the Inquiry Officer is also not at all tenable. The Dental Council, in accordance with the practice had been following, had published the list of members which is in the office and all the members who participated in the meeting had accepted the list and there was no protest from anybody. When that is so, the charge as it were, that there was large number of members included in the last minute cannot at all be sustained in law. The Inquiry Officer apparently had forgotten his role in deciding a dispute with reference to election. He was not sitting in appeal over the decision of the Council and the elected members. The

person challenging the election must prove all the averments in the petition. And we are concerned with a body of electors, who are Doctors and the number is only 65. The Doctors as members of the Dental Council had full deliberation on 6.11.1995 and each and every one attending the meeting was fully conscious of what was happening in the meeting and it is not a case where general public in very large numbers participating in an election where there is likelihood that some section of the public having regard to the fact they not being educated, not being aware what is happening at the time of election. The fourth respondent who had made representation to the Government of India, was present throughout. He knew all the members and there was a case in this Court before the date of election and he had participated the election of Vice-President and there was also a case with reference to that election where the fourth respondent was also a party. He had also contested for the post of Vice-President.

55. The point relating to jurisdiction of the Government of India u/s 5 of the Act, in my view is not relevant in the light of the decision taken by me. The learned senior counsel Mr. Madan Bhatia relied upon the observations made by this Court in C. Bhaskar Rao (Dr.) Vs. Union of India and Others, . The learned counsel for the fourth respondent Mr. Dhruv Mehta submitted that, that view is not correct in the light of the decision of the Supreme Court, referred to earlier. But in my view, in this case it is not necessary to decide this point. And for the purpose of this case I assume that the Central Government has jurisdiction to adjudicate.

56. In view of the foregoing, I am of the view that the order of the Government of India dated 6.11.1997 on the basis of the report of the Inquiry Officer dated 24.12.1996 cannot be sustained in law.

57. Accordingly, the order dated 6.11.1997 is set aside and the writ petition stands allowed. There shall be no order as to costs.