
(2011) 07 KL CK 0092
In the High Court Of Kerala
Case No : W.A. No's. 806 and 883 of 2011

Shaji K. Joseph

APPELLANT

Vs

Viswanath

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Dentists Act, 1948 — Section 3(a)

Citation : (2011) 6 RCR(Civil) 1944

Hon'ble Judges : J. Chelameswar, C.J;Antony Dominic, J

Bench : Division Bench

Advocate : K. Radhakrishnan, K.K. Dheerendra Krishnan and N. Raghuraj, for the Appellant; George Thomas Mevada (Sr. Advocate), Manu George Kuruville, Alexander Thomas, Raynold Fernandez, Susheel Joseph Cyriac, Rinu Jose and Government Pleader (K. Meera), for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The issue that arises for consideration is whether a registered Dentist, whose name is entered in the Part A State Register, maintained under the provisions of Chapter IV of the Dentists Act, 1948, but is not included in the Electoral Roll published by the Returning Officer in terms of the provisions contained in the Dental Council (Election) Regulations 1952 (hereinafter referred to as "Regulation" for short) is entitled to be a candidate in an election held in terms of S.3(a) of the Act to the Dental Council of India.

2. The first respondent, is a Dentist who is registered in the Part A State Register, and this factual position is not disputed by the appellants. On 8.6.2009, a Returning Officer was appointed by the State Government for conducting the election, of one registered Dentist possessing recognized dental qualification, to the Dental Council of India. On appointment, notice of election was published by the Returning Officer on 22.11.2009 which inter alia stated that those who have not renewed their registration before 31st December, 2009 will not have voting rights. Thereafter, on 1.6.2010 Ext.R2(c) preliminary electoral roll was published

by the Returning Officer in terms of Regulation 3 of the Regulations. The preliminary electoral roll published in the Gazette did not include the name of the first respondent. The notification provided that claims and objections, if any, relating to the entries or omissions in the preliminary electoral roll shall be preferred on or before 5 p.m. on 30th July, 2010. Subsequently Ext. R2(d) gazette notification was published extending the time limit for filing objections upto 31st August, 2010. This was also notified in the newspaper, a copy of which is Ext. R2(e). It is the admitted fact that despite the publication of the preliminary electoral roll and the extension of time that was allowed, the first respondent did not file any objection.

3. Subsequently, after passing orders on the objections filed, in terms of Regulation 3(4) of the Regulations, on 10.1.2011, the Returning Officer published Ext. R2(f) final electoral roll. Thereafter on 27.1.2011 Ext. P2 election notification was published which also contained the schedule of elections, the details of which are unnecessary for disposing of these appeals. After publication of the election notification, on 5.2.2011, the 1st respondent submitted Ext. P3 representation to the Returning Officer complaining of the omission of his name from the electoral roll and requesting him to include his name and thereby facilitating him to vote in the forthcoming election. Orders were not passed on Ext. P3. Despite his non-inclusion in the final electoral roll, on 7.2.2011, Ext. P4 nomination was submitted, where the 1st respondent offered himself as a candidate in the election.

4. Immediately thereafter, alleging that the Returning Officer is labouring under a misconception that only a person whose name is included in the electoral roll can contest the election and that therefore his nomination is likely to be rejected when the scrutiny takes place on 9.2.2011, the 1st respondent filed the Writ Petition, seeking inter alia to declare that a person whose name is included in Part A register of the Dental Council of the respective State is entitled to contest the election to the Dental Council of India in terms of S.3(a) of the Dentists Act and to direct the Returning Officer to act in terms of S.3 of the Act. During the pendency of the Writ Petition, as scheduled in the election notification, the nominations received were scrutinized by the Returning Officer on 9.2.2011. On scrutiny, the Returning Officer rejected the nomination of the 1st respondent and this was communicated to him by Ext. P6 order and the reason stated is that his name does not appear in the final electoral roll. Ext. P6 order dated 9.2.2011 reads as under:

Nomination submitted by Dr. Viswanath V BDS, (Registration Number, 1350 PART "A"). Flat 206, Kalpatharu Apartments, 13th Cross Malleswaram, Bangalore 3 with permanent address (Dental Clinic, Chemmad, Thirurangadi 676306 with present address) has been rejected under Regulation 9(2) of the DCI (Election) Regulation, 1952 as the name of Dr. Viswanath does not appear in the final electoral roll published, under Regulation 3(4) of the Dental Council (Election) Regulation 1952, in the extra ordinary Gazette number 35 dated 10.1.011.

5. Thereupon the Writ Petition was amended incorporating an additional prayer to quash Ext.P6 order. The Writ Petition was heard and the learned Single Judge by his judgment dated 23rd May, 2011 allowed the Writ Petition. The learned Single Judge rejected the plea of the appellants that the Writ Petition was not maintainable on account of the availability of an alternate remedy by way of a petition before the Central Government as provided under S.5 of the Act. Proceeding further the learned Judge held that non-inclusion of a person in the electoral roll is not a bar for contesting an election to the Dental Council of India. Editor's Note: Reported in Viswanath Vs. Kerala Dental Council, It is aggrieved by the said judgment these appeals have been filed by the additional 10th respondent and respondents 1 and 2 in the Writ Petition.

6. We heard counsel for the parties. Before we proceed to deal with the respective contentions we shall make reference to some of the provisions of Dentists Act, 1948 and the Dental Council (Election) Regulations 1952. Chapter II of Dentists Act 1948 provides for constitution and composition of Dental Council of India. This Section provides that the Central Government shall constitute the Dental Council of India, which shall consist of the members mentioned therein. S.3(a), being relevant for this case, reads as under:

The Central Government shall, as soon as may be, constitute a Council consisting of the following members namely

(a) one registered dentists possessing a recognized denial qualification elected by dentists registered in Part A of each State Register.

Section 5 of the Act provides that the election under Chapter II shall be conducted in the prescribed manner and that where any dispute arises regarding any such election, it shall be referred to the Central Government, whose decision shall be final. Chapter IV of the Act provides for registration of qualified dentists. S.31, provides for preparation and maintenance of Part A and B registers.

7. Section 20 provides that the Dental Council may, with the approval of the Central Government, by notification in the Official Gazette make regulations not inconsistent with the provisions of the Act to carry out the purposes of Chapter II. Sub-s.2(b) provides that in particular and without prejudice to the generality of the power under sub-s.(1), such regulations may prescribe the manner in which the elections shall be conducted. In exercise of the powers u/S.20(2) (b), the Dental Council of India has made the Dental Council (Election) Regulations 1952. Chapter II of the Regulations, provide for the election to the Council under S.3(a) of the Act. Regulation 3 provides for publication of preliminary electoral roll, filing of objections and publication of final electoral roll. Regulation 4 provides for fixation of dates for various stages of election. Regulation 5 provides for nomination of candidates and Regulation 9 provides for scrutiny of nomination papers. Regulation 11 provides for poll and Regulation 17 provides for declaration of results.

8. Section 3(a) of the Act provides that the member elected shall be a registered

dentist possessing a recognized dental qualification, elected by the dentists registered in Part A of each State Register. Nobody has a case that the first respondent is not a registered dentist. As we have already stated, the only question is whether in the absence of his name in the electoral roll, the first respondent is entitled to be a candidate in an election to the Dental Council of India, held as per S.3(a) of the Act. The expression "candidate" is not defined either in the Act or in the Regulation. On the other hand regulation 5 and the nomination paper in Form II shows that every candidate for election shall be nominated by means of a nomination paper in Form II and as per Regulation 6, the nomination paper shall be signed by two "electors" as proposer and seconder. The candidate is required only to declare his agreement to the nomination in the manner specified in the nomination paper and affix his signature. The term ""elector"" has been defined in Regulation 2(b)(i) which reads as under:

elector, in relation to an election to the Council, means any person entitled to vote at any such election.

9. Therefore the term elector occurring in the Regulation does not refer to a candidate in the election. On the other hand, Regulation 12 and Regulation 2(b) (i) shows that elector is the registered dentist whose name is included in the electoral roll who is entitled to vote in the election. Neither in the Act nor in the Regulation, is there any provision which provides that only an elector or one whose name is included in the electoral roll, can be a candidate in an election to the Dental Council of India. On the other hand in our view, the language of S.3(a) of the Act is very clear that the only qualification to contest in an election to the Council is that the candidate should be a registered dentist possessing recognized dental qualification, which alone entitles him to have his name included in part A Register of the State concerned.

10. Appellants contended that such an interpretation canvassed by the first respondent is against the scheme of the Act. As we have already stated the words of the statute, as contained in S.3(a) of the Act, are clear and are unambiguous. The statute also does not contain provisions similar to Ss.3, 4, 5 and 6 of the Representation of People Act, 1951 which specifically provides that only an elector to the constituency concerned can be a candidate for election. S.85 of the Kerala Municipality Act 1994, S.29 of the Kerala Panchayat Raj Act, 1994, R.35(d)(i) and 35(3)(d) of the Kerala Co-operative Societies Act/Rules etc. also contain similar qualification for contesting elections. When the words of the statute are clear, the court is bound to literally interpret the statute and departure therefrom is permissible only to avoid absurd consequences. In this context we consider it profitable to refer to the following precedents cited before us.

11. The first is the judgment of the Apex Court in Md. Shahabuddin Vs. State of Bihar and Others, where it was held that:

It is a well-settled principle in law that the court cannot read anything into a

statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute;

Again this principle was reiterated by the Apex Court in the decision reported in Union of India (UOI) and Others Vs. Alok Kumar, where it has been held:

It is a settled rule of interpretation that where the legislature in its wisdom has made an Act applicable to a particular class of persons, there it will be impossible to construe it in a manner so as to enlarge the scope of its applicability.

Further, the Apex Court in D. Velusamy Vs. D. Patchaiammal, again held:

The Court in the garb of interpretation cannot change the language of the statute.

12. In B. Premanand and Others Vs. Mohan Koikal and Others, the Apex Court has indicated the consequences of departure from the aforesaid rule as follows:

In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretation, 9th Edn, pp.45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

13. Therefore when the language of the statute is clear and unambiguous, the court is bound to interpret the law confining itself to the language employed by the legislature. In this case, there is no ambiguity in the language of S.3(a) and hence we have to confine ourselves to the letter of the law which shows the eligibility of a candidate as determined by the legislature. This provision makes it clear that the electoral college consists of registered dentists possessing recognized dental qualification. Such a requirement cannot be curtailed or enlarged by the court. If it is held that the name of the registered dentist should also find a place in the electoral roll published by the Returning Officer appointed by the State Government, the court will be changing the language of the statute in the garb of interpretation of the Act, which, is a role forbidden to the courts in the constitutional scheme prevailing in this country. In that view of the matter we reject the contention of the appellants and endorse the view taken by the learned Single Judge that the first respondent satisfied the eligibility laid down in S.3(a) of the Act and is entitled to contest the election irrespective of the omission of his name in the electoral roll published by the Returning Officer.

14. We must also take note of the contention raised by the appellants that the Writ Petition should not have been entertained in view of the alternate remedy available to the first respondent. In this context, reliance was placed on S.5 of

the Dentists Act which reads as follows.

Mode of elections.-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.

He also referred to Regulation 20 which specifies the procedure for setting aside election. It is true that when an alternate statutory remedy is available to an aggrieved person, a Writ Petition is ordinarily not entertained by a court of law. But the rule of alternate remedy, as is well settled, is only a self-imposed restriction and not a statutory compulsion "and has its exceptions. In this case, the Writ Petition was entertained by this court, parties entered appearance, filed their respective pleadings, detailed arguments were addressed and the learned Single Judge exercised his discretion and considered the contentions on merits and decided the lis. Therefore at the appellate stage, we are not inclined to reject the Writ Petition for the reason that the alternate remedy by way of a petition u/ S. 5 could have been pursued by the first respondent. This view, is fully supported by the Apex Court decision reported in U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, where it has been held thus,

Usually when Writ Petition is entertained notwithstanding availability of alternative remedy and issues are decided on merits, this Court is slow to interfere merely on the ground of availability of alternative remedy.

We see no reason to depart from this rule. For the aforesaid reasons we do not find any merit in these appeals and therefore the Writ Appeals are only to be dismissed and we do so. No costs.