

(2008) 02 DEL CK 0093

In the Delhi High Court

Case No : L.P.A. No's. 1159-61 of 2006 and C.M. No. 769 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Dr. Ramjee Singh

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 148 DLT 678 : (2008) 102 DRJ 75

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Monika Garg, for the Appellant; Arun Kathpalia, Vivek Malik and Virender Singh Thakur, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is filed by the Union of India on being aggrieved by the judgment and order dated 24th May, 2006 passed by the learned Single Judge allowing the writ petition of the respondent herein, being WP (c) No. 2593/06 holding that there was no justification for deletion of the name of the respondent from the electoral roll or voters list and also giving an observation that the respondent would nevertheless be entitled as on date to seek election to the post of President, as per the Act and the Rules. The Act and the Rules, which are referred to, are "The Homoeopathy Central Council Act, 1973" (hereinafter referred to as the "Act") and the Rules framed there under.

2. A writ petition was filed by the respondent which was registered as Civil Writ Petition No. 1186/2006, wherein he challenged the appointment of Administrator to the Central Council of Homoeopathy. The writ petition was disposed of with the following order, which was passed on 7th February, 2006:

There is no need to reflect upon the finding or efficacy of the Report of the Enquiry Commission, which admittedly has not been signed by all the Members. After hearing arguments in some detail, learned Counsel for the Respondent on instructions from Dr. Alok Kumar, Deputy Advisor, Department of Ayurveda, Yoga

and Naturopathy, Unani, Siddha and Homoeopathy(Ayush), states that elections shall be conducted in accordance with Section 7(1) of the Homeopathy Central Council Act, 1973 within a period of four weeks from today. He further states that the impugned Order dated 18-1-2006 shall not be acted upon in these circumstances. Prima facie there appears to be no provision in the statute for the appointment of an Administrator. This is manifestly clear from the Report of the Rajya Sabha pertaining to the proposed Homeopathy Central Council (Amendment) Bill, 2005. The Respondents had set up a case for the amendment to the Statute empowering the appointment of an Administrator. The Committee expressed the opinion that such a provision would not be democratic and in the interest of the Council. Inasmuch as the Administrator has been appointed, the impugned Order does not have the sanction of law. It is accordingly quashed. The Writ Petition stands disposed of in these terms.

3. The appellant thereafter took steps for holding election to the office bearers of the Central Council. At that stage the name of the respondent was not reflected in the list prepared by the Returning Officer. Consequently, the petition out of which the present appeal arises was filed. An interim order was passed in the said writ petition on 2nd March, 2006 permitting holding of election to the post of President and Vice President to be conducted u/s 7(1) of the Act.

4. In the said writ petition, the appellant herein took a definite stand that the name of the respondent was rightly deleted from the list prepared by the Returning Officer on the ground that he had ceased to be a elected member of the Council effective from 4th December, 1997 consequent upon his having been nominated under the provisions of Section 3(1)(c) of the said Act.

5. The respondent however, also took up a very strong stand that he never intended to be nominated as a nominated member nor his name was nominated with his consent. It is his contention that he never resigned as an elected member and, Therefore, the action of the appellant in nominating him without his consent and knowledge as a nominated member was without jurisdiction and cannot be operational.

6. The learned Single Judge considered the aforesaid stand taken by the contesting parties. It was held that the elections have become due so far State of Bihar is concerned in 1995 but no such election was held. The other two representatives, who were elected along with the respondent continued as members of the Central Council. In that context, it was held that the respondent would, Therefore, be deemed to be continuing as an elected member since 1990 along with two other members and, Therefore, there appears to be no valid reason for him to have been privy to his nomination to the Central Council instead of continuing as an elected Member until fresh elections were conducted. The learned Single Judge also held that Rule 4 of the Homoeopathy Central Council (Election) Rules, 1975 would clearly show that until a fresh list is received from the State concerned, the names of all the three representatives cannot be scored out and that if the same applies to the two other

representatives from the State of Bihar, it would apply in identical manner to the respondent. In that context and after recording the aforesaid findings, it was held by the learned Single Judge that there was no justification for removing the name of the respondent from the electoral roll or voters list and if he had not wished to accept nomination, he would nevertheless remain entitled as on date to seek elections to the post of President, as per the Act and the Rules.

7. The aforesaid findings and conclusions arrived at by the learned Single Judge are under challenge in this appeal, on which we heard the learned Counsel appearing for the parties and have also gone through the records as also the provisions of the Act and the Rules framed there under. We may herein extract the relevant provisions:

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

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

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

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

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

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

5(1) No person shall be eligible for election to the Central Council unless he possesses any of the medical qualifications included in the Second or the Third Schedule, is enrolled on any State Register of Homoeopathy and resides in the

State concerned.

7(1) The President, Vice-President or a member of the Central Council shall hold office for a term of five years from the date of his election or nomination, as the case may be, or until his successor shall have been duly elected or nominated, whichever is longer.

8. In the context of the aforesaid arguments and the records, the issue that arises for our consideration is whether the respondent could be said to be continuing as an elected member or he accepted his nomination and acted as a nominated member of the Council. Section 3(1)(a) provides the manner and mode through an elected member is elected and appointed whereas Section 3(1) (c) lays down the criteria for appointment as a nominated member by the Central Government. Sub-section (2) of Section 5, however, clearly provides that no person may at the same time serve as a member in more than one capacity. Therefore, the respondent could be either discharging his duties as elected member or as a nominated member. Once he is elected as a member, he serves for a tenure of five years or to the next election held for the purpose whichever is longer. The respondent was elected from the State of Bihar. After the respondent had continued for five years as a member of Bihar, the Central Government issued a notification on 4th December, 1997, nominating the respondent as a nominated member. A copy of the said notification dated 4th December, 1997 is put on record and from the said document placed on record it is established that the aforesaid notification was also published in the Gazette of India dated 4th December, 1997. In the said notification it was stated that pursuant to the provisions of Clause (c) of Sub-section (1) of Section 3 of the Homoeopathy Central Council Act, 1973, the persons mentioned in the said notification had been nominated by the Central Government from amongst persons having special knowledge or practical experience in respect of Homoeopathy or other related discipline to be members of the Central Council of Homoeopathy. The name of the respondent is mentioned against Serial number 12.

9. Undisputedly, the respondent was elected as a member effective from 29th October, 1990 for a tenure of five years, which period had expired but the next election was not held and, Therefore, till the date of 4th December, 1997, he continued to be an elected member by virtue of the provisions that the term of elected member would be for a tenure of five years or to the date when next election is held, whichever is longer. There is also no dispute to the fact that the Central Government nominated him on 4th December, 1997. The appellant has placed on record certain documents to prove and establish that the respondent accepted the aforesaid position of being a nominated member and he exercised his right as a nominated member. It was also stated that the respondent contested the elections for Vice President in the capacity of a nominated member and to that effect he signed in the attendance register of meeting of Central Council of Homeopathy to elect Vice President/ President held on 24th March, 1999. Copy of the aforesaid register was produced for our perusal during the

course of hearing. The said register does indicate that the respondent signed as a nominated member u/s 3(1)(c) of the Act. Section 5(2) also postulates that no person may at the same time serve as a member in more than one capacity thereby making it clear that there is a statutory bar in continuing as a member in more than one capacity at the same time. The fact of his being appointed as a nominated member to the Council was made known to each and everyone by issuing the aforesaid notification, which was also published in the Official Gazette. The respondent never protested as against the issuance of the aforesaid notification and the publication of the aforesaid notification in the Official Gazette. The aforesaid notification having been published in the Gazette becomes operational and functional. The Annual Report of the Council also indicates the respondent as a nominated member. There is a further fact that he was elected as Vice President in his capacity of being nominated member on 24th March, 1999. The respondent aspired to become the Vice President of the Council and for that reason he accepted the aforesaid nomination as a nominated member of the Council and took full advantage of that for contesting the election for the post of Vice President of the Council.

10. Our attention was drawn by the counsel for the respondent that the Central Council of Homoeopathy postulates that any member, who desires to resign his seat on the Council, has to send his resignation in writing to the President and that his resignation would become effective from the date specified by him in that behalf or from the date of receipt of the letter by the President whichever is later, after confirmation from the member concerned. Relying on the said provision it was sought to be submitted by the counsel appearing for the respondent that there was no such resignation letter on record, which would show that the respondent at any point of time intended to resign and in fact submitted his resignation from the elected membership and gave his consent for being nominated as a nominated member. Such letter of resignation is not on record but issuance of the Gazette notification nominating the respondent as a nominated member, his acceptance of the same by signing the register in the aforesaid manner and also contesting election of the Vice President as a nominated member proves and establishes that not only the respondent did not object to for being appointed as a nominated member but he accepted the same and in such capacity attended meetings and also contested election to be appointed as Vice President of the Council. Apparently, the respondent is taking advantage of the fact that he could continue as a member of the council as an elected member from Bihar as no election has been held in Bihar and Maharashtra since 1990. This indeed is a very sorry state of affairs and is deplorable for a statutory authority constituted in accordance with law and any delay in holding election only speaks of lackadaisical attitude of the Council.

11. We hope and trust that elections from the State of Bihar and the State of Maharashtra, if not held already, should be held immediately by the concerned authorities so as to have a complete and effective Council. It appears that fresh nomination was made to the Council on 18th January, 2006 when all the

nominated members were replaced. Since the respondent is not re-nominated and has since been replaced, Therefore, it appears that the aforesaid writ petition now filed by the respondent so as to enable him claim all benefits as an elected member contending, inter alia, that he continues to be an elected member from the State of Bihar.

12. We cannot accept the aforesaid position, and in our opinion he is not entitled to the said benefit after having enjoyed the benefit of being a nominated member. He may not have resigned from his post by submitting an application but he accepted the status and position of being appointed as a nominated member. The Central Government also helped him by appointing him as a nominated member so as to enable him to contest the election for the post of Vice President of the Council by issuing a notification and publishing the same in the Gazette also. After his nomination in 1997, the respondent did not protest and contest his appointment for 5 years. He has taken advantage of that fact by attending meetings as nominated member and now when the period of nominated member has come to an end by efflux of time, he turns back and adopts a different stand altogether. The aforesaid notification was issued in the year 1997, and was also published in the Gazette. Having exercised powers as a nominated member for long nine years, he has now turned back and says that he was never been elected as a nominated member. The respondent has changed his stance because after 1997, no elections have taken place for appointment of elected members u/s 3(1)(a) of the Act.

13. We, Therefore, allow the appeal and accordingly set aside the order of the learned Single Judge. With the aforesaid findings, we dismiss the writ petition of the respondent.