

(2011) 05 KL CK 0071

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 4075 of 2011

Viswanath

APPELLANT

Vs

Kerala Dental Council

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Dental Council (Election) Regulations, 1952 — Regulation 20, 3, 3(1), 3(4)
Dentists Act, 1948 — Section 20, 3, 31, 32, 33

Citation : (2011) 2 ILR (Ker) 907 : (2011) 2 KLT 971

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : George Thomas Mevada, Shyam Padman, Raynold Fernandez, Susheel Joseph Cyriac, Manu George Kuruvilla and Rinu Jose, for the Appellant; N. Raghuraj, Sajeew Kumar K. Gopal, Anil K. Narendran and Jaiby Paul, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J.—Whether a candidate has to be an "elector" finding a place in the final voters" list to contest the election to the Dental Council of India u/s 3(a) of the Dentists Act, 1948, is the issue involved herein.

2. The Petitioner who acquired a degree in BDS (Bachelor of Dental Surgery) from the Government Dental College, Bangalore in the year 1981 set up his practice as a Dental Surgeon in Calicut till 1984 and thereafter shifted his practice to a suburban area called Chemmad in Malappuram district, where he is continuing as such. As per the relevant provisions of law, a qualified Dentist has to be got registered under the Act and the Registration has to be renewed every year as prescribed. The registration of the Petitioner was earlier with the Dental Council, Karnataka and was later registered in the Dental Council, Kerala w.e.f. 12.08.1993 as per Ext. P1 certificate of registration.

3. In fact two types of registration are contemplated under the Statute-Part A and Part B as given u/s 31. Persons possessing a recognized dental qualification

are to be registered under Part A and others under Part B. As evident from Ext.P1 the Petitioner is a duly qualified Dentist, who has got registered under Part A and the Registration having been renewed, is stated as valid till 31.12.2014 as mentioned in Ext. P1 itself.

4. By virtue of the eligibility of the Petitioner, he is entitled to contest the election in respect of the constituency earmarked for one registered Dentist possessing a recognized Dental qualification elected by the dentists registered in Part A of each State register, as mentioned in Section 3(a) of the Act. The election was notified by the second Respondent as per Ext. P2 notification dated 27.1.2011 specifying the last date for receipt of nomination (7.2.2011), date of scrutiny of nomination (9.2.2011), date of withdrawal of nomination (16.2.2011), date of sending ballot papers to the voters (3.3.2011), date of poll (18.3.2011) and the date of counting (19.3.2011). The Petitioner being desirous to contest the election, however happened to note that his name was not included in the Electoral Roll and the grievance was sought to be redressed by filing Ext.P3 representation dated 5.2.2011 before the second Respondent, seeking to include him in the "electoral roll", facilitating him to exercise the right of franchise.

5. While so, the name of the Petitioner was proposed by one of the electors and was seconded by another, to contest the election. The nomination was agreed to by the Petitioner, submitting Ext.P4 nomination before the second Respondent. Apprehending that the nomination of the Petitioner was likely to be rejected, on a wrong and misconceived idea as to the non-inclusion of his name in the electoral roll, the Petitioner approached this Court by filing the above Writ Petition on 8.2.2011 seeking for appropriate reliefs, when the scrutiny was to be held on the next day. However, in the course of the scrutiny, Ext.P4 nomination was rejected by the second Respondent, as apprehended by the Petitioner, as per Ext.P6 order, for the reason that the Petitioner's name did not find a place in the final Electoral Roll published under Regulation 3(4) of the Dental Council (Election) Regulations, 1952 in the Extra Ordinary Gazette number 35 dated 10.2.2011. The Petitioner has got the Writ Petition amended, challenging Ext.P6 as well.

6. Mr. George Thomas Mevada, the learned Senior Counsel appearing for the Petitioner submits that rejection of the nomination is per se arbitrary and illegal and that anybody who satisfies the requirements u/s 3(a) of the Act is eligible to contest the election in respect of the concerned constituency, who need not be an "elector" at all, in view of the scheme of the statute. It is contended that neither the Act nor any Regulation framed by the Dental Council of India (by virtue of the power u/s 20 of the Act) does insist that only a person who is enlisted in the final Electoral Roll is eligible to contest the election. It is pointed out that the Act/Regulation envisages only that the "proposer" as well as the "seconded" shall be the electors and further that non-inclusion of the name in the final voters' list (electoral roll) could, at best, dis-entitle a person from exercising his right of voting; which is no way connected with the right to contest the election, separately taken care of u/s 3(a). The learned Sr. Counsel further

submits that the only qualification prescribed for contesting the election to the Dental Council of India is to be a "registered Dentist" possessing a recognized Dental qualification, finding a place in the Part A register, which is very much satisfied by the Petitioner and as such, nothing can be added to the said provision, prescribing some other additional qualification/ satisfaction of requirement, like to have a place in the Electoral roll. It is contended that the second Respondent was not right in re-writing the law, by incorporating a new condition as above, showing as the reason for rejecting the nomination as mentioned in Ext.P6, which hence is under challenge.

7. When the matter came up for consideration before this Court on 14.2.2011, notice was taken by the learned Standing Counsel for the concerned Respondents and by the learned Government Pleader for the 4th Respondent, while notice was ordered by Speed Post to the others. Subsequently, taking note of the submissions made from the part of the Respondents 1 and 2 that ballot papers had already been printed and dispatched and that the remaining process was only that of counting, an interim order was passed on 3.3.2011, making it clear that the proceedings of election will be subject to result of the Writ Petition and the result shall not be declared without getting permission from this Court.

8. On receipt of notice, the tenth Respondent has filed a counter affidavit along with I.A. No. 5426 of 2011 seeking to vacate the interim order. It is stated that the tenth Respondent happened to secure the maximum number of votes and that non-declaration of result, in view of the interim order passed by this Court, is causing much loss and hardships. It is contended that the Petitioner, admittedly having no place in the final voters' list published in the official gazette and having submitted no objection whatsoever in response to the preliminary Electoral Roll, is not entitled to be heard to say that his belated claim as put forth in Ext. P3 representation for inclusion in the voters' list ought to have been considered or that he is entitled to contest the election. It is stated that non-inclusion of the name in the final Electoral Roll is fatal and Ext. P6 order passed by the second Respondent, rejecting Ext.P4 nomination, does not call for any interference.

9. A counter affidavit has been filed on behalf of the Respondents 1 and 2 referring to the relevant provisions of the Act and Regulations, asserting that the idea and understanding of the Petitioner as to his right to contest the election without being included in the final Electoral Roll is quite wrong and misconceived. The sequence of events as to the appointment of the second Respondent as the Returning Officer, publication of the preliminary Electoral Roll inviting objections, if any; publishing of final Electoral Roll followed by the election notification and subsequent developments have been narrated; simultaneously pointing out the effect of registration, renewal and other incidental aspects. Referring to the relevant provisions of the Act/Regulations, it is stated that the Petitioner has an efficacious alternate remedy, if at all he is aggrieved in any manner and the Writ Petition is sought to be dismissed accordingly.

10. During the course of hearing, maintainability of the Writ Petition was questioned much from the part of the Respondents referring to the existence of the alternate remedy. It is true that Section 5 of the Act says that the Election under Chapter II of the Act 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. Section 20 of the Act deals with the power to make Regulations. Sub-Section 2(b) of Section 20 refers to the manner in which elections under the said Chapter are to be conducted. It is in exercise of the said power that the third Respondent/Dental Council of India has framed the Dental Council (Election) Regulations 1952. Regulation 20 speaks about the manner in which the election can be set aside by the Central Government u/s 5. Normally by virtue of settled position of law, no interference is to be made in election matters, as a matter of course and the party is to be relegated to avail the alternate remedy as provided. But when it comes to rejection of nomination, for a reason which is totally arbitrary and illegal in all respects (being contrary to the relevant provisions of the statute or for such other palpable reasons or in a case where no steps to adduce evidence is necessary, which merely forms a question of law), interference is possible at the hands of this Court, invoking the discretionary jurisdiction under Article 226. More so, when the defect is not of substantial character. This is the law declared by the Apex Court in *Rangilal Choudhury v. Dahu Sao and Ors.* (1962 (2) SCR 401) and by a Division Bench of this Court as well, in *(Ravi v. Kottayam Co-op. Union Bank Ltd. 1993 (1) KLT 644)* and also in *(Pankajaksha Panicker v. Venugopalan Nair 1993(2) KLT 641)*, besides a recent decision rendered by this Court in *W.P.(C) No. 37739 of 2010*, reported in *Mannady Service Co-op. Bank Ltd. Vs. Krishna Kumar and Another, .*

11. Considering the issue involved in the present case, there is absolutely no dispute with regard to the factual position and the only dispute is on a "question of law", i.e., whether a candidate has to be included in the final Electoral roll for contesting the election to the particular Constituency or whether satisfaction of the requirement as contemplated u/s 3(a) alone is enough. This being the position, this Court finds that the plea of alternate remedy raised from the part of the Respondents is not of much significance and for deciding such legal question, the party need not be relegated to avail the same. The question of maintainability of the Writ Petition is held in favor of the Petitioner.

12. Coming to the merits involved, the learned Sr. Counsel for the Petitioner submits that there is black and white difference between the right to contest the election to the Dental Council u/s 3(a) of the Act and the position under other Statutes like the Representation of People Act, Panchayat Raj Act, Municipalities Act, Kerala Co-operative Societies Act/Rules etc. In the latter group of legislations, specific provisions are there as to the sanctity of the electoral roll and the necessity of the candidate to be an elector, for contesting the election. Quite contrary to the same, no such provision is there either in the Dentists Act, 1948 or in the Dental Council (Election) Regulations, 1952 framed thereunder, to

stipulate or suggest that a candidate has to be an "elector".

13. As far as the right of a contestant under the Dentists Act is concerned, it is not enough for a person to have placed in the final voters" list to contest the election, for which, he has necessarily to be a registered Dentist possessing a recognized dental qualification, with a place in the Part A register. The relevant provision reads as follows:

Section 3(a):

3. Constitution and composition of Council:

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

(a) one registered dentist possessing a recognized dental qualification elected by the dentists registered in Part A of each State register.

Section 31 deals with Preparation and Maintenance of Register in Parts A and B. Section 32 deals with "first preparation" of Register; Section 33 deals with qualifications for entry on first preparation of Register; Section 34 deals with qualification for subsequent registration, while Section 41 deals with the specific circumstances under which the name of the person concerned could be removed from the Register, with an enabling provision as specified u/s 42, to have the name restored to the Register on satisfying the requirements as mentioned therein. The "Effect of registration" is given u/s 46. The scheme of the Statute, read with Section 39 prescribing the renewal fee, makes it clear that registration has to be renewed as prescribed. In other words, even if a registered dentist is included in the final electoral roll, if he happens to be removed from the Part A Register subsequently, he loses his chance to contest the election representing the Constituency u/s 3(a).

14. The learned Standing Counsel for the Respondents 1 and 2 and the learned Counsel for the tenth Respondent submit that the Petitioner, for having no place in the final electoral roll duly published in the official Gazette, is not apart of the electorate and as such, he cannot contest the election under any circumstance. If the contention of the Petitioner is to be accepted, there is no point in prescribing the necessity to have preliminary electoral roll, steps inviting claims/objections and preparation and publication of final electoral roll. It is also stated that the Petitioner, as admitted in Ext. P3 representation dated 5.2.2011, had not filed any objection to the preliminary voters" list and such person who has not filed his objection in this regard before publication of the final electoral roll, is having no right to seek for any positive relief in view of the law declared by this Court in (Muhammad Ali Vs. State Election Commission, , submits the learned Counsel.

15. True, the law is well settled to the extent that a person who has not submitted any objection/claim in respect of the preliminary voters" list cannot come forward after publication of the final electoral roll, to be given a place therein and to exercise his rights accordingly. But this obviously can only be with

regard to the "voting rights" and not with regard to the candidature to contest the election, in the absence of any clear cut provision either in the Act or in the Regulations, insisting for an entry in the final voters" list to contest the election. In the case of elections under the Representation of People Act, Kerala Panchayat Raj Act/Municipalities Act, Kerala Co-operative Societies Act/Rules etc, there is no register like Part A register as contemplated u/s 3(a) of the Dentists Act and this being the position, Part A Register becomes the master document with regard to the eligibility.

16. By virtue of the stipulations under the Dentists Act/ Regulations, nomination paper can be issued only to an "elector" (Regulation No. 5 of the Regulations) and the nomination has to be proposed and seconded by two electors in the manner as prescribed, who find a place in the final Electoral Roll. But it has to be borne in mind that nomination paper need not be issued to the contesting candidate himself, as it can be obtained by the person who is proposing the candidate or the person who is seconding the candidate, who are electors finding a place in the final Electoral Roll. As borne by Ext. P4 nomination, the role of the candidate is only to give a "declaration" that he/she agrees to the nomination and nothing more. As it stands so, the contention of the Respondents 1 and 2 and the Respondent No. 10 that the Petitioner is not even eligible to obtain nomination paper is quite wrong and misconceived. The Petitioner/candidate is only supposed to agree to the nomination made by somebody else/elector (as proposed and seconded) and is to give a "declaration" accordingly.

17. With regard to the scope of placement or omission to be included in the final voters" list, it is a matter of record that the second Respondent had duly notified the preliminary voters" list inviting claim/objections and that final voters" list was published in the official Gazette. It is also a fact that Petitioner's name was somehow omitted to be included in the preliminary Electoral Roll and no objection/claim was filed in this regard till the publication of the final Electoral Roll. By virtue of having not been included in the final voters" list, it may be contended that no ballot paper is liable to be forwarded to such a person, who does not figure out in the final Electoral Roll and as such, he cannot exercise his right of franchise to elect a candidate. The Writ Petition is not for any such right "as an elector" to cast vote in favor of some candidate, but with regard to the "right to contest election" as a candidate u/s 3(a) of the Act.

18. The sanctity of Part A register and the scope of Electoral Roll becomes more evident from the Regulation No. 3 of the Regulations, the full text of which is extracted below:

3. Preliminary electoral roll - (1) Part A of the register as published with reference to Sub-sections (3) and (4) of Section 31 and Sub-section (4) of Section 32, together with the list or lists published in the official gazette by the Returning Officer, of dentists registered under Part A subsequent to the publication of the register, shall be the preliminary electoral roll for the electorate specified in Clause (a) of Section 3:

Provided that in the case of elections other than those held for the first time under the Act, the preliminary electoral roll shall be Part A of the register as last printed u/s 45, together with the list or lists, published by the Returning Officer, of dentists registered subsequent to the printing of the register.

(2) The Returning Officer shall prepare and publish in the official Gazette on a date to be fixed by the State Government, preliminary electoral rolls in Form 1 in Appendix I, containing the names of all the electors for the electorate specified in Clause (a) of Section 3.

(3) The Returning Officer shall simultaneously publish a notice in the Official Gazette specifying the mode in which the time within which claims and objections relating to the entries or omissions in the preliminary rolls shall be preferred.

(4) On or after the date fixed for the receipt of the claims and objection, the Returning Officer shall pass orders in writing on each claim or objections and revise the preliminary electoral rolls in accordance with such orders, and the rolls, as revised, shall be published in the Official Gazette as the final electoral rolls.

The proviso to Regulation 3(1) is very significant, in so far as it says that the preliminary electoral roll shall be Part A of the Register as last printed u/s 45, together with the list/lists published by the returning officer, of the Dentists registered subsequent to the printing of the Register. By virtue of the above proviso, in cases of elections other than those held for the first time under the Act, all those persons enlisted in Part A Register get an automatic entry in the preliminary Electoral Roll, as the deciding factor is Part A Register as last printed; plus the subsequent entries/registration; subject to changes, if any, as to the eligibility. If there is an automatic entry, as above, the deletion if any, while preparing and publishing the final electoral roll can only be on the basis of a conscious decision, pursuant to some or other objections. There is no case for the Respondents 1 and 2 or the tenth Respondent that the name of the Petitioner was deleted pursuant to any such exercise, but for that the same might be due to some or other mistakes, since there is no dispute with regard to registration of the Petitioner, which is valid till 31.12.2014 as borne by Ext.P1 and as to his rights and liberties u/s 3(a) of the Act. But since the publication of the preliminary Electoral Roll was duly effected inviting objections, it was for the Petitioner to have made necessary claim/objections against the omission (though inadvertent) and to have placed in the final Electoral Roll, so as to exercise his rights "as a voter". This, however, cannot bar the way of the Petitioner in contesting the election as a candidate u/s 3(a), once the requirement u/s 3(a) stands satisfied; which does not stipulate/insist inclusion in the final Electoral Roll. No specific provision in the "Act" was brought to the notice of this Court by any of the Respondents, as similar to the provisions in the Representation of People Act, Panchayat Raj Act, Kerala Co-operative Societies Act/Rules, to suggest that a person who contests the election to the Dental Council of India u/s 3(a) has necessarily to be an "elector", finding a place in the final Electoral

Roll. No such provision under the "Regulation" is also brought to the notice of this Court in this regard.

19. Admittedly, the Regulations have been framed invoking the power u/s 20 of the Act, which reads as follows:

20. Power to make regulations.-- (1) The Council may, with the approval of the Central Government by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power such regulations may

(a) xxxxxx

(b) prescribe the manner in which elections under this Chapter shall be conducted.

From the above, it is clear that the power to make Regulations vested with the Dental Council of India is only to prescribe the "manner" in which election is to be conducted and not to stipulate any added qualification or to delete/water down the norms as prescribed u/s 3(a). The power to prescribe the manner to conduct election cannot be read and understood so as to suggest that candidature u/s 3(a) of the Act is subject to a placement in the final Electoral Roll published under Regulation No. 3. Even otherwise, nowhere in the Regulations has it been mentioned that such right to contest the election is subject to finding a place in the final Electoral Roll. This Court finds that the Petitioner satisfies the requirement contemplated u/s 3(a) of the Act to contest the election to the Dental Council of India, whose candidature ought not to have been rejected for want of an entry in the final Electoral Roll published by the second Respondent.

20. In the above facts and circumstances, the Petitioner is entitled to succeed. Ext. P6 order passed by the second Respondent rejecting Ext.P4 nomination in respect of candidature of the Petitioner is set aside. The second Respondent is directed to proceed with further steps for conducting the election after including the name of the Petitioner as well, in the list of valid nominations, effecting necessary publication as to the relevant dates to be notified and the proceedings shall be pursued as above, declaring the result on the basis of such election to be conducted afresh, from the stage after submission of the nominations. This shall be finalized as expeditiously as possible, at any rate within two months from the date of receipt of a copy of the judgment.

The Writ Petition is allowed. No cost.