

**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 17.11.2011  
Judgment Pronounced on: 23.11.2011

**+ CS(OS) No.2355/2010**

Indian Medical Association Calcutta Branch ..... Plaintiff  
Through: Mr. (Dr.) Amitabha Sen, Advocate

versus

Indian Medical Association ..... Defendant  
Through: Mr. Anil Sharma, Advocate  
with Mr. Abhishek Misra, Advocate

**CORAM:-**  
**HON'BLE MR JUSTICE V.K. JAIN**

- |                                                                          |    |
|--------------------------------------------------------------------------|----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not?                                | No |
| 3. Whether the judgment should be reported in Digest?                    | No |

**V.K. JAIN, J**

1. This is a suit for mandatory injunction. The plaintiff is the Calcutta Branch of defendant - Indian Medical Association, which is a Society, registered under the Societies Registration Act of 1860 and has been established with a view to promote and advance medical and allied sciences and promote cooperation amongst its members.

The constitution of the defendant envisages a three tier system comprising of an apex association i.e. Indian Medical Association, State Councils and Local Branches.

Rule 15-B of Bengal State Branch of IMA, as amended in the year 2007 provides that local branches will elect their representatives to the Bengal State Council on the following scale:

|                   |                   |
|-------------------|-------------------|
| 5 – 15 Members -  | 1 Representative  |
| 16 – 25 Members - | 2 Representatives |
| 26 – 50 Members - | 3 Representatives |
| 51 – 100 Members- | 4 Representatives |

Above 100 Members, one representative for every 100 members or part thereof is to be elected.

The aforesaid Rule is alleged to be favourable to the smaller branches and unfavourable to the larger branches like Calcutta Branch which is the plaintiff in this suit. As a result, 28 big branches with total membership of 6696 have voting strength of 167 whereas 79 small branches with a combined membership of 3657 have voting strength of 244. The aforesaid rule is stated to be contrary to Rule 19-B (ii) of the constitution of the defendant

Association which provides that branch representatives from local branches and from direct members shall be on the following scale:

|                    |                                                                      |
|--------------------|----------------------------------------------------------------------|
| 20 – 100 Members - | 1 Representative                                                     |
| After 100 Members- | One additional representative for every 100 members or part thereof. |

The plaintiff has sought a decree for mandatory injunction directing the defendant to enforce and implement Rule 19-B (ii) in all its supporting bodies including Bengal State Branch. The plaintiff also wants a mandatory injunction directing the defendant to immediately suspend the Bengal State Branch for violating its constitution.

2. Since the defendant failed to file Written Statement despite service, its right to file Written Statement was closed vide order 2<sup>nd</sup> May, 2011. The plaintiff, however, was directed to file affidavit by way of evidence in support of the case set up by it. The plaintiff has accordingly file affidavit of its Vice President Dr. Pradeep Kumar by way of evidence. In his affidavit by way of evidence Dr. Pradeep Kumar supported on oath the case set out in the plaint.

3. Exh. PW-1/2 is the Memorandum of Rules and

Bye-laws of the defendant Association. Rule 6 of the aforesaid Rules provides that there shall be a State/Territorial Branch of the Association for each State/Union Territory in India, which shall have jurisdiction over all Local branches of the Association within its area. Rule 4 provides that the Members of the Association have to group themselves into separate local bodies styled as Local Branches. Rule 5 provides that each Local Branch shall have a local area for its jurisdiction and operations which is to be finally approved by the Working Committee of the Association on the recommendation of the concerned State/Territorial Branch of that area. Rule 7 provides wherever there is no State/Territorial Branch, a branch below 100 members will be considered as a direct Local Branch and will be attached to the Headquarters office. Rule 7-A provides that all branches of the Association viz. State/Territorial, Local, Direct Branches and Overseas Branches shall be under the overall control of the Headquarters and governed by Rules and Bye-laws of Indian Medical Association Headquarters as amended from time to time. Those of the Branches which are individually registered under the Societies Registration Act or under Any

Act, come under the overall discipline and control of the Headquarters and require to abide by its Rules and Bye-laws.

4. Rule 8 (i) provides that a Local and State Branch shall be free to govern itself in such a manner as it thinks fit and for that purpose to make from time to time Rules and Bye-laws as it may think fit, provided they are in general conformity with the Rules and Bye-laws of the defendant Association and have been approved by the Honorary Secretary General subject to subsequent ratification by the Working Committee. Rule 8 (iv) provides that the Rules and Bye-laws of Indian Medical Association shall apply in any matter if not covered by Rules, Bye-laws of the State/Territorial or Local Branch already ratified by the Working Committee of the Association. Rule 13-C provides for enrolment of Direct Members. The persons who are eligible for membership and reside or practise or are employed in place where no Local Branch exists, are called Direct Members. If there is a State or Territorial Branch in the State or Territory such Direct Members are to be attached to the State or Territorial Branch concerned. Direct Members not residing or practicing within the

jurisdiction of any State or Territorial Branch are to be attached to the Headquarters. The Bye-laws also provide for Life Members, Special Members, Associate Members, Attached Members, Affiliated Members, Intern Members and Overseas Members.

5. Sub Rule (A) of Rule 19 deals with the composition of the Central Council. The persons specified in Clause (A) of Rule 19 are Ex-Officio Members of the Central Council. Sub Rule (B) of Rule 19 on which reliance has been placed by the plaintiff reads as under:

***(B) Representative of Local Branches:***

- i. The total number of members of the Local Branches on whose behalf HFC has been received in full by 31<sup>st</sup> March shall form the basis of determining the representation of Local Branches on the Central Council.*
- ii. Branch representatives from the Local Branches and from Direct Members shall be in the following scales: 20-100 Members One representative. After 100 Members-one additional representative for every 100 members or part thereof.*
- iii. The representative of the local branches to the Central Council should be Life Member(s) and to be elected for two years.*
- iv. In determining the representation of Local Branches on the Central Council, the strength of a Local Branch shall be determined each year on the number of its members on the Register of Membership of that Branch at the Headquarters on behalf of whom HFC has been received in full at*

*the Headquarters by 31<sup>st</sup> March. Complete list of Membership as on 31<sup>st</sup> March shall be sent by each Local Branch so as to reach the Headquarters through the State or Territorial Branch concerned by the 30<sup>th</sup> April.*

- v. Since the representation of the local branch in the central Council depends on the strength of the local branch, which is to be determined each year, if the said strength undergoes a change before expiry of term of two years affecting the representation in the Central Council in that event, the local branch will be bound to take appropriate action.*
- vi. The Local Branches shall also elect an equal number of alternate representatives who shall be entitled to be sent as substitute in place of a regular representative, as and when occasion arise at the discretion of the President of the Local Branch in which case the President of the Local Branch shall intimate the Headquarter office in advance the name of the alternate member at least two weeks before the meeting and the agenda of the meeting received by the regular representative shall be passed on to such alternate representative.*

The impugned Rule of Bengal State Branch reads as under:

## **15. Management**

*1. Bengal State Council – The general management of the Association shall be vested in the Bengal State Council.*

*A. Composition of Bengal State Council*

*(a) Ex-Officio Member (Elected under Rule 17C):*

- (i) *The President of the Association for the year.*
- (ii) *All the past Presidents*
- (iii) *The five Vice-Presidents for the year*
- (iv) *The Hon. State Secretary*
- (v) *The Three Hony. Joint Secretaries*
- (vi) *The Hony. Treasurer*
- (vii) *The Two Hony. Assistant Secretaries.*
- (viii) *The Immediate Past Hony. State Secretary for the year.*
- (ix) *Director of Studies, Bengal State Faculty, I.M.A. College of G.P.*
- (x) *Chairman, Bengal State Chapter, I.M.A. Academy of Medical Specialties*
- (xi) *Hony. Executive Secretary or Hony. Jt. Secretary, Social Security Scheme, I.M.A. Bengal State Branch*
- (xii) *Hon. Secretary or Hon. Jt. Secretary, Bengal State Faculty, I.M.A. College of General Practitioners.*
- (xiii) *Hony. Secretary or Hony. Jt. Secretary, Bengal State Chapter, I.M.A. Academy of Medical Specialties*
- (xiv) *All Regular and Alternate Members of the Central Working Committee.*

*(b) Elected Members:*

*Representatives from the Local Branches.*

*B. Election of elected Members of the Bengal State Council:*

*Election of the Representatives from the Branches:*

*Local Branches shall elect their representatives to the Bengal State Council on the following scale:*

|                          |                            |
|--------------------------|----------------------------|
| <i>5 to 15 Members</i>   | <i>-1 Representative</i>   |
| <i>16 to 25 Members</i>  | <i>-2 Representatives</i>  |
| <i>26 to 50 Members</i>  | <i>-3 Representatives</i>  |
| <i>51 to 100 Members</i> | <i>- 4 Representatives</i> |

*Above 100 members 1 additional representative for every 100 or part thereof.*

6. A bare perusal of Sub-Clause (ii) of Rule 19-B would show that it refers to ‘representation of Local Branches in the Central Council’ of the defendant Association and does not deal with representation of the Local Branches in the State/Territorial Branch. Rule 15-B of Rules of Bengal State Branch on the other hand deals with ‘representation of the Local Branches to the State Council’. The two Rules therefore deal with and operate in different fields, one referring to representation to the Central Council of the apex body and the other dealing with representation of the Local Branches to the State Unit. The fact that Rule 19-B (i) of the Rules and Bye-laws of the defendant Association pertains only to representation to its Central Council is evident also from the other clauses of this Rule. Clause (iii) of Rule 19-B for instance provides that the

‘representatives of the Local Branches to the Central Council’ should be Life Members and to be elected for two years. In determining the ‘representation of the Local Branches on the Central Council’ the strength of a Local Branch shall be determined each year on the basis of its members on the Register of Membership of that Branch at the Headquarters. Clause (v) provides that since the ‘representation of the Local Branch in the Central Council’ depends upon the strength of the Local Branch, which is to be determined each year, if the said strength undergoes a change before expiry of term of two years ‘affecting the representation in the Central Council’, in that event the Local Branch will be bound to take appropriate action. Thus, it can be safely said that Rule 19-B (ii) of the Memorandum of Rules and Bye-laws of defendant Association pertains only to the representation of the Local Branches and Direct Members to the Central Council of the defendant Association and does not deal with the representation of the Local Branches to the State Branch. Hence, in view of the provisions contained in Rule 8 (i), the State Branch is free to make its own Rules and Bye-laws with respect to representation of the local Branches to the

State Branch and such rules are binding on the Members constituting the Branch in which they are made - provided they have been approved by the Honorary Secretary General subject to subsequent ratification by the Working Committee. This is not the case of the plaintiff that the amendment made by the Bengal State Branch was not approved by the Honorary Secretary General of the defendant and was not ratified by its Working Committee. The only plea taken by the plaintiff is that the Rule framed by Bengal State Branch is not in conformity with Rule 19-B (ii) of the Apex Association, and I find no merit in the plea taken by the plaintiff in this regard. Though Rule 8(i) provides for a model set of Rules and Bye-laws to act as guidelines for Local and State Branches such model Rules and Bye-laws are not binding on the State Branch so long as its own Rules and Bye-laws are in general conformity with the Rules and Bye-laws of the Apex Association and are approved by its Honorary Secretary General and ratified by its Working Committee. In any case, since Rule 19(B) (ii) of the Rules & Bye-laws of the defendant association, does not pertain to representation of the Local Branches to the State Branches, it cannot be said that Rule 15(B) of the Rules of

Bengal State Unit is in conflict with the Rules of the apex body, i.e., the defendant association. Consequently, the Rule framed by Bengal State Unit for representation of the Local Branches to the State Unit remain valid and binding on the members of all the Local Branches, coming under the control of Bengal State Unit.

For the reasons given in the preceding paragraphs, no decree for mandatory injunction, as sought by the plaintiff, can be granted. The suit is devoid of any merit and is dismissed without any orders as to costs. Decree sheet be drawn accordingly.

**(V.K. JAIN)**  
**JUDGE**

**NOVEMBER 23, 2011**  
**VN**