

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3102 of 2015

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1. Dr. Basant Singh son of Late Raghubir Singh, resident of Mohalla-Golghar, P.S. Gandhi Maidan, P.O. G.P.O. District-Patna.

..... Petitioner/s

Versus

1. The Vice Chancellor, B.N. Mandal University, Lalu Nagar, Madhepura.
2. The Registrar, B.N. Mandal University, Lalu Nagar, Madhepura.
3. The Secretary, Medical Council of India, Sector-8, Pocket-14, Dwarka Phase-I, New Delhi-110077.
4. The Secretary, Department of Health & Family Welfare, Medical Education, Government of India, Nirman Bhawan, New Delhi.
5. Dr. Arun Kumar Agarwal, Professor of Neurosurgery, Patna Medical College Hospital (PMCH), Patna.
6. Union of India through its Secretary, Ministry of Health and Family Welfare, Department of Health, Government of India, Nirman Bhawan, New Delhi.
7. B.N.Mandal University through its Registrar, Lalu Nagar, Madhepura
8. The Medical council of India, through its Secretary, Sector 8, , Dwarka Phase-I, New Delhi-11 to 77

..... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Adv. Mr. Pranav Kumar, Adv.
For the Respondent	:	Mr. Sujeet Kumar Sinha, CGC
For the B.N. Mandal University:		Mr. Mithilesh Kumar Rai, Adv.
For Private respondent	:	Mr. Ajay, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

5 13-05-2015 Heard Mr. Y.V. Giri, learned Senior counsel for the petitioner, Mr. Sujeet Kumar Sinha for the Central Government, Mr. Mithilesh Kumar Rai, learned counsel for the B.N. University, Mr. Kumar Brajnandan for the Medical Council of India and Mr. Ajay for the private respondent.

A supplementary counter affidavit has been filed today by

the University enclosing the copy of certificate of election of the private respondent to the Indian Medical Council under Section 3(1)(b) of the Medical Council Act, 1956(hereinafter referred to as 'the Act').

The petitioner has questioned the election of the private respondent Dr. Arun Kumar Agarwal as member of the Medical Council of India. According to the petitioner, the private respondent did not fulfill the requisite qualification to qualify as a faculty member of the B.N. Mandal University nor is a member of the University Senate. According to the petitioner an objection was filed by him before the Returning Officer who is the Registrar of the University, a copy of which is present at Annexure-2 to the writ petition but had gone unresponded and the private respondent has been declared elected as member of the Medical Council of India. Learned counsel submits that although a dispute was raised before the Central Government under Section 4(2) of 'the Act' vide Annexure-3 on 19.1.2015 with a prayer to declare the election of the private respondent void but the same has remained pending before the Government of India in its Ministry of Health and Family Welfare.

According to Mr. Giri, learned Senior counsel for the petitioner, the respondent University while accepting that the



private respondent is a Professor of Neurosurgery in the Patna Medical College and Hospital, Patna and is a visiting Professor in the respondent University which by itself is sufficient to disqualify him to contest the election, yet these infirmities have been ignored. He submits that the notification of the Medical Council of India further confirms the illegality where the private respondent is shown as Professor, Katihar Medical College. According to the petitioner these are sufficient reasons to declare the election of the private respondent as void.

As the petitioner while raising all these issues has admitted that an application has been filed before the Government of India to set aside the election of the private respondent but had stated that the certificate of election has not yet been provided by the University that the University was directed as such and Mr. Mithilesh Kumar Rai today hands over the certificate of election of the private respondent to the petitioner's counsel.

Mr. Sujeet Kumar Sinha, learned Central Government Counsel has submitted that the election dispute so raised by the petitioner before the Central Government is in the form of a representation and does not confirm to an election petition which should accompany the documents relied upon by the petitioner to question the election of the private respondent.

Contesting such argument it is submitted by Mr. Giri relying upon the provisions of Section 4(2) of the Indian Medical Council Act that the provisions of Section 4(2) merely requires a reference to the Central Government of an election dispute and the objection present at Annexure-3 would suffice such requirement.

I have heard learned counsel for the parties and I have perused the records.

In view of the provisions of Section 4(2) of the Indian Medical Council Act, 1956 the remedy for the petitioner lies before the Central Government and the petitioner appreciating this legal position has indeed moved the Central Government.

Although Mr. Giri has tried to justify the application filed by the petitioner before the Central Government for questioning the election of the private respondent but in my opinion the same is not in the form of an election petition in as much as it neither arraigns the parties nor does it accompany any document to support the plea of disqualification. I am in agreement with Mr. Sinha, learned Central Government Counsel that the representation present at Annexure-3 does not suffice an election petition. Once person has been elected to a body, his election can only be questioned in a statutory manner and with support of documents relied upon. These are conspicuously missing in the

petition.

In the circumstances discussed and in view of the fact that the certificate of election has now been handed over to the counsel for the petitioner hence in view of the statutory provisions underlying Section 4(2) of 'the Act', the writ petition is disposed of with liberty to the petitioner to file a duly constituted election petition in accordance with the provisions of Section 4(2) of 'the Act' before the respondent No.6, Secretary, Ministry of Health and Family welfare, Government of India. It goes without saying that any such election dispute being raised by the petitioner would be considered and disposed of in accordance with law by the Secretary, Ministry of Health and Family Welfare, Government of India after opportunity of hearing to the contesting parties expeditiously and preferably within three months from the date of filing of such election petition.

(Jyoti Saran, J)

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