

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO.3383 OF 2015.**

**Dr.Ashok s/o Shankarrao Adhao ..vs.. Union of India and ors.**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Mr.Anand Parchure, Adv. for the petitioner.  
Mr.Rohit Deo, ASGI for respondent no.1.  
Mr.N.R.Patil, AGP for respondent no.2.  
Mr.C.S.Kaptan, Sr.Advocate with Ms.Swapna Kode Adv.  
with Mr.Nikhil Gaikwad Adv. for respondent no.3.  
Mr.Bhangde, Adv. for respondent no.8.

**CORAM : B.P.DHARMADHIKARI AND  
P.N.DESHMUKH, JJ.**

**DATED : SEPTEMBER 14, 2015.**

Elections to a seat of representative on respondent no.8 – Medical Council of India through its Secretary have been held on 9<sup>th</sup> of April, 2015. Respondent no.3 who resides at Latur has been declared elected and present petitioner residing at Nagpur has lost the election. On 25<sup>th</sup> of April, 2015 petitioner filed an appeal before respondent no.1 under Rule 25(1) of Indian Medical Council (Election) Rules, 1957. The appeal is also accompanied by a separate application for its expeditious consideration.

As the appeal was not taken up for consideration within reasonable time, present writ petition has been filed. Prayer is to expedite consideration of appeal and till then respondent no.1 should not issue any notification appointing respondent no.3 over respondent no.8 without vigilance clearance and/or during pendency of petition before respondent no.1.

Advocate Parchure submits that the voting was allowed by postal ballot paper and the illegality has been committed in the process by respondent no.2 and as such election is materially affected. He

submits that the challenge to use of postal ballot paper and therefore a request to hold it by secret ballot was also assailed before this court and that petition was ultimately dismissed by this Court.

Advocate Deo, learned ASGI, appearing for respondent no.1 states that respondent no.1 has summoned the records and comments from respondent no.2 who has acted as Returning Officer. After receipt of record decision on appeal shall be taken at the earliest.

Shri C.S.Kaptan, learned Senior Counsel appearing with Advocate Mr.Gaikwad for respondent No.3 states that in Rules there is no provision for passing any restraining orders and hence respondent no.3, an elected representative, cannot be restrained from functioning even in challenge before this Court in writ jurisdiction. He also points out that as election has been conducted at Bombay and result has been declared there, the challenge needs to be presented at the Principal Seat at Bombay.

Advocate Parchure, in brief reply, states that only one representative is to be elected for entire State and hence entire State of Maharashtra was constituency. The ballot has been sent from all over the State including the area within jurisdiction of this Court. Petitioner resides within said area and has contested election from said area.

In this situation, we find that as entire State of Maharashtra constitutes one Constituency and Medical Practitioners residing in State of Maharashtra were eligible to contest and vote, the objection to territorial jurisdiction is misconceived. Entire State of Maharashtra formed one Constituency and there was only one election.

There was no representative from State of Maharashtra on respondent no.8 for quite some time as reported by petitioner only. The decision is to be taken by Council by majority. Admittedly, the Rules regulating disposal of election petition do not contemplate grant of any interim order. Along with appeal petitioner had only moved application seeking expeditious disposal of appeal.

In this situation, as agenda of meeting would be known in

advance and resolution, if any, shall be passed after due deliberation and by majority, we permit respondent no.3 to participate as representative of State of Maharashtra on respondent no.8. However, same shall be subject to further orders of respondent no.1 in pending election petition. Petitioner is also at liberty to challenge any particular resolution if it shows any misuse or abuse of his position by respondent no.3, independently.

The proceedings in pending election petition are expedited. Respondent no.2 is directed to supply records and comments to respondent no.1 within four weeks from today. Respondent no.1 shall attempt to decide pending election petition within further period of three months thereafter.

With these directions, Writ Petition is partly allowed and disposed of.

No costs.

At this stage, Advocate Parchure seeks stay of this order for the period of six weeks to enable the petitioner to approach the Hon'ble Apex Court. Advocate Kaptan states that meeting of Council is scheduled on 1<sup>st</sup> of October, 2015.

In this situation, we are not inclined to grant request made by Advocate Parchare.

Steno copy of this order be furnished to the parties.

JUDGE

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