

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 3686 of 2015 (I)

PETITIONER:

**DR.SHAJI K. JOSEPH, AGED 56 YEARS,
S/O.P.M.JOSEPH, KURISINKAL HOUSE,
NEAR HOLY FAMILY HIGH SCHOOL,
KANJIKUZH, MUTTAMBALAM P.O.,
KOTTAYAM DISTRICT, PIN - 686 004.**

**BY ADVS.SRI.SAJEEV KUMAR K.GOPAL
SRI.R.HARISHANKAR**

RESPONDENT(S):

- 1. THE STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO THE GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. KERALA DENTAL COUNCIL, RED CROSS ROAD,
THIRUVANANTHAPURAM- 695 035,
REPRESENTED BY ITS REGISTRAR.**
- 3. THE RETURNING OFFICE AND REGISTRAR,
KERALA DENTAL COUNCIL, RED CROSS ROAD,
THIRUVANANTHAPURAM - 695 035.**

**R1 BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT
R2 & R3 BY SRI.N.RAGHURAJ, SC**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 3686 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT P1 : TRUE COPY OF THE NOTIFICATION VIDE NO.D.395/13/DC
 DATED 30-07-2013.**

EXT P2 : TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER.

RESPONDENT(S)' EXHIBITS & ANNEXURES:

ANNEXURE R3 : TRUE COPY OF THE NOTIFICATION DATED 5.1.2015.

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.3686 of 2015

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Dated this the 18th day of February, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

- “i) Issue a writ of mandamus or other appropriate writs, directions or orders directing the 3rd respondent to take fresh steps as contemplated under Rule 3(2) and (3) of the Kerala Dental Council Rules, 1963 for the preparation of the final electoral roll for election to the Kerala Dental Council.
- ii) Declare that the proceedings now initiated for the finalization of the final electoral roll for election to the 2nd respondent Council is against Rule 3(1) of the Kerala Dental Council Rules, 1963.
- iii) Render any such other orders as are deemed fit and proper in the circumstances of the case.”

2. The factual position disclosed in this writ petition is that the petitioner, after attaining the qualification and necessary registration from the 2nd respondent Kerala Dental Council (for short, 'Council') is practicing as a Dentist. The case projected by the petitioner is that Election to the Council has to be made in accordance with the relevant

provisions of Kerala Dental Council Rules, 1963 and as per the mandate of Rule 3 of the Kerala Dental Council Rules, 1963. Part 'A' and Part 'B' registers published with reference to Section 31(3) and (4) and Section 32(4) together with the list or lists published by the Returning Officer in the Kerala Gazette as specified, shall respectively be the preliminary electoral roll for the purpose of election. As per the relevant provisions of law, Part 'A' register has to be updated every year. In the instant case, the preliminary notification was issued as per Ext.P1 dated 30.07.2013, effecting the publication in the Kerala Gazette, inviting objections, if any, to the preliminary electoral roll. Despite the lapse of nearly 1 ½ years, the final voters list was not published. The petitioner is compelled to approach this Court because of the steps now being taken to conduct Election on the basis of the entries in the Part 'A' register which was taken as the basis for having issued Ext.P1 publication. The net result, according to the petitioner, is that, inspite of the updation of

the register every year, that is, by the 1st April 2014, the new entrants are denied a chance to be included in the voters list and hence their vested rights will be defeated in all respects. It is also pointed out that the petitioner had no grievance earlier when Ext.P1 was issued, which ought to have been finalized within a reasonable time. But having let the time go by, if the election is permitted to be conducted at this stage, based on Ext.P1, rights of about 3500 Dentists, who came to be subsequently enrolled in the Part 'A' register, are likely to lose their voting right and to contest the election. Hence the writ petition.

3. A statement has been filed from the part of 2nd respondent Council referring to the facts and circumstances under which the delay has occurred. It is pointed out that there is absolutely no callous inaction or wilful negligence on the part of the Returning Officer or the Council in finalising the proceedings. In paragraph 7 of the statement, it is pointed out that the proceedings have been finalized and the

final electoral roll has been forwarded to the Government on 01.01.2015 for publication in the official Gazette. The learned Standing Counsel points out that the same is being printed in the State Gazette extraordinary No.163 dated 20.01.2015 and, as such, any interference at this stage is not warranted. The learned Standing Counsel also brought to the notice of this Court that the 'Election schedule' has already been published, proposing to conduct the Election stipulating the relevant dates, such as receipt of the nomination paper by 21.02.15, scrutiny on 23.02.2015 withdrawal on 03.03.2015 and the polling to be held on 25.03.2015. A copy of the said notification bearing No.D.396/13/DC/Eln. dated 05.02.2015 is produced as Annexure R3 along with the statement. It is also brought to the notice of this Court that, the petitioner, after the updation of Part 'A' register allegedly with reference to 01.04.2014, has not approached this Court within reasonable time, but has filed Ext.P2 representation only in the year 2015, which

is stated as sent by 'e-mail' and served to the concerned respondent on 30.01.2015.

4. After hearing both the sides, this Court finds that, this is not a fit case to call for interference at this stage, especially when the final voter's list is stated as already finalised and the same is being printed and published in the official Gazette of the State. Interference is declined and the writ petition is dismissed accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

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