

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

+ LPA 402/2015 & C.M.No.11195/2015 (*stay*)

Pronounced on: 07th January, 2016

MINISTRY OF LABOUR & EMPLOYMENT Appellant
Through: Mr.Sanjay Jain, ASG with Mr.Ripu
Daman Bhardwaj, CGSC with Mr.T.P.Singh,
Ms.Shreya Srivastav, Ms.Astha Jain, Advocates.

Versus

INDIAN MEDICAL ASSOCIATION & ANR Respondents
Through: Mr.Nitesh Jain, Advocate for R-1.
Mr.Nidhesh Gupta, Sr.Advocate with Mr.Amit
Kumar, Mr.Ashish Kumar and Mr.Prithvi Pal,
Advocates for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

: **G.ROHINI, CHIEF JUSTICE:**

1. This appeal is preferred against the order of the learned Single Judge dated 09.12.2015 in W.P.(C) No.7080/2013.
2. The said writ petition was filed by the respondent No.1 herein – Indian Medical Association with a prayer to quash the notification dated 13.06.2013 issued by the appellant herein/Government of India, Ministry of Labour and Employment under Section 3(1) of the Employees State Insurance Act, 1948 thereby constituting the ‘Employees State Insurance

Corporation’ to the extent of including the respondent No.2 herein – Dr.Purshottam Lal as a Member of the Corporation.

3. By the order under appeal, the writ petition was allowed and the impugned notification dated 13.06.2013 insofar as it relates to appointment of the respondent No.2 as a constituent member of ESIC was set aside. Hence the present appeal by the Union of India, Ministry of Labour and Employment.

4. We have heard the learned counsel for both the parties. As per Section 3 of the Act, a Corporation known as Employees State Insurance Corporation (for short ‘the Corporation’) has to be established by the Central Government for the administration of the scheme of Employees State Insurance in accordance with the provisions of the Act. As per Section 4, the Corporation shall consist of the members specified therein which included under Clause (h) 2 persons representing the medical profession to be appointed by the Central Government in consultation with such organization of medical practitioners as may be recognized for the purpose by the Central Government.

5. The appellant herein/Union of India called upon the Indian Medical Association (for short ‘IMA’) to provide the name of its representative for being appointed as a member of the Corporation in terms of Clause (h) of Section 4 of the Act and IMA recommended the name of Dr.Vinay Aggarwal as its nominee. However, by the impugned notification dated 13.06.2013, the Corporation has been constituted including the name of Dr.Purshottam Lal as the representative of IMA.

6. W.P.(C) No.7080/2014 therefore came to be filed by IMA challenging the inclusion of Dr.Purshottam Lal in the Corporation contending that the appointment of Dr.Purshottam Lal being not in consultation with a recognized organization of medical practitioners is illegal.

7. The writ petition was opposed by the Ministry of Labour & Employment contending that the communication exchanged between the Ministry and IMA was in sufficient compliance with the requirement of consultation provided under Section 4(h) of the Act. It was sought to be explained that though the Ministry had invited IMA to provide more nominations for appointment in order to have a wider choice of nominees, IMA failed to do so.

8. The learned Single Judge opined that the expression consultation employed in Section 4(h) of the Act has to mean a meaningful dialogue and since there was no dialogue between the Central Government and any other organization of medical practitioners with regard to appointment of Dr.Purshottam Lal, his appointment was in violation of the procedure prescribed under Section 4(h) of the Act.

9. The further contention of the writ petitioner was that the Respondent No.2, Dr. Purshottam Lal was disqualified for being chosen as a Member of the Corporation by virtue of Section 13(c) of the Act which reads:

“13. A person shall be disqualified for being chosen as or for being a Member of the Corporation, the Standing Committee or the Medical Benefit Council

(a)

- (b)
- (c) if he has directly or indirectly by himself or by his partner any interest in subsisting contract with or any work being done for the Corporation except as a medical practitioner or as a shareholder (not being a Director) of a Company.
- (d)

10. The allegation was that Dr.Purshottam Lal being a Director on the Board of several companies of Metro Group Hospitals which have entered into a contract for providing services to the Corporation and also owns over 59% shareholding in the said companies, he suffered a disqualification.

11. Having regard to the fact that Dr.Purshottam Lal is a shareholder of Metro Group of Hospitals and he is also a Director on the Board of Metro Group of Hotels, the learned Single Judge held that Dr.Purshottam Lal has also suffered a disqualification under Section 13(c). Accordingly, his appointment was set aside and the writ petition was allowed.

12. Assailing the said order, it is contended before us by Sh.Sanjay Jain, the learned ASG appearing for the appellant that even assuming that consultation as envisaged under Section 4(h) has not taken place, it would not invalidate the appointment of Dr.Purshottam Lal under the impugned notification since the consultation under Section 4(h) is only directory in nature. It is also sought to be contended that in the guise of consultation provided under Section 4(h), IMA cannot compel the Central Government to accept its recommendation without application of mind.

13. Regarding the disqualification under Section 13(c) of the Act, it is submitted by the learned ASG that Section 13(c) carves out an exception in favour of the shareholders who are also medical practitioners and since

Dr.Purshottam Lal is also a medical practitioner, he does not suffer any disqualification for appointment as a member under Section 4 of the Act.

14. It is contended by the learned counsel appearing for the respondent No.2 that even assuming that the appointment was made without consultation with any organization of medical practitioners, the same does not give a right to challenge the appointment. In support of the same, the learned counsel relied upon *State of U.P. v. Manbodhan Lal Srivastava*, **AIR 1957 SC 912**, *Major U.R.Bhatt v. Union of India*, **AIR 1962 SC 1344**, and *State of A.P. v. Rahimuddin Kamal (Dr.)*, **(1997) 3 SCC 505**.

15. There can be no dispute about the ratio laid down in the above decisions that the absence of consultation or any irregularity in consultation process do not confer any right on the public servant to challenge the appointment.

16. However, as rightly held by the learned Single Judge, the intention of the Parliament in enacting the provision that there shall be consultation with recognized organization of medical practitioners is to have inputs from the organizations about the expertise of the person to be appointed. Such consultation is apparently absent in the present case since the proposal to nominate Dr. Purshottam Lal was not even conveyed to IMA. Therefore, we entirely agree with the view of the learned Single Judge that the absence of consultation with IMA/the recognized organization of medical practitioners which is mandatory under the Act, has vitiated the nomination of the Respondent No.2.

17. Regarding the disqualification provided under Section 13(c), we found that the exception provided under clause (c) relates to (i) interest in

subsisting contract with the Corporation as a medical practitioner; or (ii) interest in subsisting contract with the Corporation as a shareholder of a company. Therefore, we find force in the submission of the learned ASG that a medical practitioner as well as a shareholder fall within the scope of exception provided under Clause (c) of Section 13. Consequently, we are unable to agree with the finding that the respondent No.2 suffered a disqualification.

18. However, in view of our finding that the appointment is bad since there was no consultation as required under Section 4(h) of the Act, we uphold the conclusion of the learned Single Judge.

19. In the result, the appeal shall stand dismissed.

CHIEF JUSTICE

JAYANT NATH, J.

JANUARY 07, 2016
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