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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Pronounced on 27th March, 2017

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LPA 425/2016

DR. RAJ ARYA

...Appellant

Through: Ms. Gunjan Sinha Jain, Adv.
with Ms. Bhavana Dahoon, Adv.

Versus

GOVT.OF NCT OF DELHI AND ANR.

...Respondents

Through: Mr. Gautam Narayan, ASC with
Mr. R.A. Iyer, Adv. for R-1 & 2.
Mr. P. P. Khurana, Sr. Adv. with Mr.
Praveen Khattar, Adv. For R-3/Delhi Dental
Council. Mr. T. Singhdev, Adv. for MCI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The unsuccessful petitioner in W.P. (C) No. 6006/15 is the appellant before us.
2. The appellant is challenging the entire election process alleging that the Election held in 2014 by the Delhi Dental Council was in complete violation of the prescribed norms as provided under the Dentist Act, 1948. The learned Single Judge dismissed the WP(C) No.6006/15 vide order dated 04.04.2016 and observed that there was no cause of action for setting aside

the said election. The relevant paras 13, 17, 18, 19 of the impugned judgment, are reproduced as under:

“13. I have perused the speaking order dated 15th May, 2015 and do not find any case for interference therewith to have been made out.

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17. The counsel for the petitioner contends that without a notification no election could have been held by the Returning Officer under Section 3(a) even if the respondent no.3 DDC had requested for the same. However on enquiry as to what prejudice has been caused thereby and what is the cause of action to the petitioner therefore, all that he is able to state is that several persons did not participate in the said election being of the view that the said election will be set aside and are without jurisdiction.

18. That however still does not furnish any cause of action to the petitioner for setting aside of the election so held, that too without impleading the persons elected.

19. I am therefore of the view that no case for interference or for exercise of power of juridical review in respect of the election held is made out.”

3. Ms. Gunjan Sinha Jain, the learned counsel for the appellant contended that in view of Election notification dated 06.03.2014, the Returning Officer was appointed only to conduct the elections to the Delhi Dental Council under clause (a) and (b) of Section 21 of the Dentist Act, 1948 and not to conduct elections under 3(a) of the Dentist Act, 1948.

4. Learned counsel for the appellant further urged that in the instant case no notification was issued with respect to elections under Section 3(a) and as per Chapter II of the Dental Council of India (Election) Rules, 1952 which could only be done by the State Government.

5. Learned counsel further contended that the process of elections conducted in November/December, 2014 was a facade and in complete violation of confidentiality/secrecy norms. The learned counsel further submitted that the decision dated 15.05.2015 was a non speaking order as it did not deal with the irregularities committed by the Returning Officer.

6. On the converse, Mr. Gautam Narayan, Additional Standing Counsel appearing on behalf of the respondent No. 1 and 2 submitted that the speaking order dated 15.05.2015 passed by the Delhi Government pursuant to the representation to the Delhi Government as well as the impugned order dated 04.04.2016 passed by the learned Single Judge is self explanatory and does not call for any interference.

7. The contention of Mr. P. P. Khurana, learned Senior Advocate for respondent No.3/Delhi Dental Council is that the Returning Officer conducted a free, fair and transparent election under the supervision of a Court Observer and the same was upheld by the order dated 15.05.2015 passed by the GNCTD.

8. We have heard learned counsel for the parties and have also perused the relevant sections and material available on record.

9. As far as the dispute regarding election held by the respondent in pursuance to the notification dated 08.09.2014 for constituting the Dental

Council of India is concerned, it would be necessary to peruse Section 26 of the Act which reads as under:

“26. Mode of elections:

Elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the State Government whose decision shall be final.”

10. As a matter of routine, courts do not interfere in matters pertaining to elections. In ***Balbir Verma Vs. Indian Institute of Architects*** reported at ***2015 SCC Online Del 12217***, this court held that *it is well settled principle of law that an election dispute has to be raised in the manner and before a fora provided in the statute and the general law will not apply thereto.* However, in the present case the appellant had made a representation to the Delhi Government as per section 26 of the Dentists Act, 1948 which was accordingly dealt with vide order dated 15.05.2015.

11. According to the learned counsel for the appellant the election in question were full of anomalies and discrepancies. Earlier also the appellant approached this court seeking the same relief by way of Writ Petition No. 8539/14 which was disposed of on 22.12.2014 through a consent order wherein a retired Judge was appointed as a "Court Observer". The Court Observer taking note of all the allegations held that the election process was conducted in a free and fair manner with complete transparency. Relevant portion of the report is as under:

"10.1 Dr. Raj Arya, petitioner, inter alia, pointed out that there are grave irregularities inasmuch as from the serial numbers printed on the Ballot Papers, every voter can be identified by their names appearing in the electoral list

published on the website. Thus the secrecy, which is the hall mark of any election process, has been completely compromised. He stated that the prescribed proforma of the Ballot Paper under the Rules does not permit the printing of voters' serial numbers on the Ballot Papers; He further stated that management authorities of some of the Dental Colleges collected blank voting papers from their employees and PG students and used the same in favour of their chosen candidates and that mere perusal of the postal stamps on the outer envelopes would reveal that they have been posted in bulk from a single post office.

10.2 Dr. Anil Dhalla, representative of Dr. Anil Mittal, one of the candidates, in addition to the objection in the above para, in his complaint dated 08.11.2014 stated that most of the declarations are not signed by the Electors; that the Ballot Papers were not shown to the candidates or their representatives, as required by Rule 15(4). He further pointed out that under clause (6) of Rule 15, RO was not authorized to nominate more than four scrutinizers and the scrutinizers could only be members of the Council and not outsider. The purpose behind this rule is that the members of the council are in a better position to identify the bogus votes than any other scrutinizer. He stated that the representatives of the candidates were made to sit at such a distance that it was impossible for them to see any Ballot paper and to raise any objection about the genuineness of the same, which is also in violation of Rules. Dr. Anup B. Kanase, a contestant, and some other candidates also endorsed the above objections and also pointed out that at serial numbers 3278 and 3279 of the electoral list are of the same person. It was also stated that the verifications of

the signatures on the declaration forms of the voters vis-a-vis their signatures in the Delhi Dental Council record would have revealed that a large number of bogus votes have been cast.

10.3 Some of the objectors/complainants also submitted their objections in writing. They were informed that the election process is on and the issues raised by them can be examined only by the Hon'ble Court in the appropriate proceedings. In any case, it is not within the domain of the observer to examine these issues.

11. Otherwise the election process was conducted in a free and fair manner with complete transparency. The contesting members were unanimous that the election of the Dental Council Delhi should have been held through the Electronic Voting Machine (EVMs) and the rules need to be modified.....”

12. It is pertinent to mention that the findings in the report of the Court Observer was neither objected nor challenged. The relevant paras of the order dated 15.05.2015 passed by the Government of NCT of Delhi, Health & Family Welfare Department reads as under:

“The points raised by the Petitioners have been considered in the clarifications given by the Returning Officer regarding the process of elections. The serial numbers were given as per convention, to also track the ballot papers and for the issuance of duplicate/fresh voting paper. **Secrecy of votes was maintained by the Returning Officer.** No vote was declared invalid for the want of additional information in the Declaration Form and the Rules do not place any bar on use of any post office by the voters to cast votes. The scrutiny of the votes and counting of votes have been done by team of

officers who were Gazetted Officers/Medical Officers of Govt. Of NCT of Delhi and therefore possibility of any kind of malpractice does not appear feasible. Results and number of votes polled were declared by the Returning Officer after the counting was over hence tampering of votes post declaration of result, as stated by the petitioner, is not justified. Govt. of NCT of Delhi was also informed by the Returning Officer about the result of elections u/s. 21 of Delhi Dentists Act, 1948.

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On careful consideration of the Petitioner's representations and the clarifications of Returning Officer, I am of the opinion that elections of Delhi Dental Council members under Section 3(a), 21(a) and (b) of the Delhi Dentists Act 1948 **has been free and fair under the supervision of a Court Observer appointed by the Hon'ble High Court."**

13. The contention of the learned counsel for the appellant that the fundamental element of every election is secrecy and the same was discarded in this case, is without force. The Government of NCT of Delhi, Health & Family Welfare Department vide its order dated 15.05.2015 addressed the various discrepancies, illegalities and anomalies. It was categorically stated in the aforesaid order that the Secrecy of votes was maintained by the Returning Officer and thus the order, in our view is a well reasoned order and the Court Observer also gave a finding in his report that the election process was conducted in a free and fair manner with complete transparency. In this background, we are of view that the view taken by the learned Single Judge does not call for any interference.

14. To deal with the contention pertaining to Section 3(a) of the Dentist Act, 1948 that the elections could only be called for by the State Government, it would be relevant to reproduce Section 3(a) and Section 21(a) & (b) of the Dentist Act, 1948, which reads as under :

“3. The Central Government shall, as soon as may be, constitute a Council consisting of the following members, namely:

(a) one registered dentist possessing a recognised dental qualification elected by the dentists registered in Part A of each 3 [State] register;”

“21. Except where a Joint 1 [State] Council is constituted in accordance with an agreement made under section 22, the 1 [State] Government shall constitute a 1 [State] Council consisting of the following members, namely: - (a) four members elected from among themselves by dentists registered in Part A of the 1 [State] register;

(b) four members elected from among themselves by dentists registered in Part B of the 1 [State] register;”

15. Under Section 21(a) & (b) of the Act four members are to be elected each from part A and B and under Section 3(a) one dentist for Dental Council of India, is to be elected.

Delhi Dental Council vide its letter dated 07.02.2012 requested the Special Secretary (Health), Government of NCT of Delhi for appointment of Returning Officer in terms of Section 2(i) Dental Council (Delhi State)

Rules, 1951 for holding elections. Relevant portion of the letter dated 07.02.2012 is recapitulated as under:

“In the above matter, this is to inform you that last elections to Delhi Dental Council to elect 4 (four) Members from amongst Registered Dentists registered in Part-A of the Dentist Register and 4 (four) Members elected from amongst Dentists register in Part-B of the Dentist Register; including 1 (one) registered Dentist in Part (A) possessing recognised dental qualifications for DCI u/s 3(a) of the Dentist Act, 1948 were held in July 2007. The term of five years laid down in Section 27 of the Dentist Act, 1948 shall stand expired in July 2012. The next election to the Delhi Dental Council are required to be conducted in July 2012. Thus there is a need to appoint a Returning Officer in terms of clause (i) of Rule 2 of the Dental Council (Delhi State) Rules 1951 by the Govt./Govt. of NCT of Delhi in pursuance of powers delegated to Hon’ble Lt. Governor of Delhi u/s 55 of the Dentist Act 1948, under Article 239 of the Constitution of India to exercise the powers and functions of the State Govt. under the Dentist Act, 1948 and Rules made thereunder to hold the elections.”

16. Perusal of letter dated 07.02.2012 makes it abundantly clear that the request was made by Delhi Dental Council for appointment of Returning Officer for holding elections to elect members under clause (a) & (b) of Section 21 and also under Section 3(a) of the Act. Pursuant to the request of the Delhi Dental Council, notification dated 06.03.2014 was issued by Government of Delhi appointing the Returning Officer.

17. The Returning Officer issued a notification dated 08.09.2014 containing the schedule of election program for Delhi Dental Council Election, 2014 and another notification dated 17.09.2014 containing the

schedule of election program for election of one dentist for Dental Council of India. The records bears the testimony to the effect that elections under Section 3(a) of the Act were held on specific request of the respondent/Delhi Dental Council to the Returning Officer.

18. It is a matter of record that in the notification No. No.F.25/5/2012/DSDC/H&FW/1537-1545 dated 06.03.2014, Section 3(a) of the Dentist Act, 1948, Act seems to have been omitted and the notification only relates to election to be conducted by the Returning Officer under Clause (a) and (b) of Section 21 of the Dentists Act, 1948. At the same time, it cannot be overlooked that though Section 3(a) of Dentist Act, 1948 was omitted but on the earlier occasion a composite notification dated 08.06.2007 had been issued for conducting the election under Clause (a) and (b) of Section 21 of the Dentists Act, 1948 as well as Section 3(a) of the Dentist Act, 1948.

19. In the aforesaid facts and circumstances of the instant case, we are of the considered view that the Returning Officer Dr. Ravindera Agarwal was duly appointed by the Lt. Governor of the NCT of Delhi vide notification dated 06.03.2014 and thus the Returning Officer did not surpass his jurisdiction.

20. We, therefore, find no reason to interfere with the order under appeal and the appeal is accordingly dismissed.

SANGITA DHINGRA SEHGAL,J.

CHIEF JUSTICE

MARCH 27, 2017 / gr//

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