

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1027 of 2018

In
Civil Writ Jurisdiction Case No.12134 of 2018

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1. Vaidya Ajay Prakash @ Ajay Prakash @ Dr. Ajay Prakash son of Dr. Sarvadeo Prasad Gupta, R/o village- Nechua Jalalpur, P.s.- Kuchai Kot, District- Gopalganj
 2. Vaidya Prajapatti Tripathi son of Late Gangadhar Sharma, R/o village- Tabkipur, P.s.- Maharajganj, District- Siwan
 3. Vaidya Nagendra Sharma, son of Late Pradip Narayan Singh, R/o village- Guravi Sugar Mill, P.S.- Guravi Sugar Mill, District- Muzaffarpur
 4. Vaidya Basant Kumar Singh, son of Late Nitishwar Prasad Singh, R/o Mohalla- Raj Palace Juran Chapra, P.S.- Town Muzaffarpur, District- Muzaffarpur

... .. Appellant/s

Versus

1. The Union Of India through its Secretary, Ministry of Ayush, Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi-110023
2. The Central Council of Indian Medicine 61-65 Institutional Area Janakpuri, New Delhi 110056 through its Secretary
3. The Special Secretary-cum-Returning Officer, Govt. of Bihar, Health Department, Patna, Bihar
4. The Under Secretary to Govt. of India, Secretary Ministry of Ayush, Ayush Bhawan, B. Block, G.P.O. Complex, INA, New Delhi-110023
5. The Under Secretary-cum-Inquiry Officer, Ministry of Ayush B-Block G.), Complaex, New Delhi-110023
6. Dr. Mantosh Kumar Jha, son of not known to the petitioner, R/o village- Anti, P.S. & District- Madhubani
7. Ravi Nath Mishra, Advocate, R/o 4-B/44, Jawahar Nagar, District- Sri Ganga Nagar, Rajasthan
8. Dr. Ram Balak, Secretary, Indian Anti Corruption Organization, Station Road, Gulzarbagh, Patna.
9. Vidya Arun Kumar, Prantia Mantri Bihar State Ayurvedic Congress, C/o Dr. Alakh Narayan Singh, Railway Handar Road, East Lohanipur, Patna-3.
10. Dr. Subhash Chandra Verma, son of not known to the petitioner, R/o Brahampur, District- Buxar-802112

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P. K. Shahi, Sr. Advocate Mr. Mukesh Kumar, Advocate
For the Respondent/s	:	Mr. S.D. Yadav- A.S.G. Mr. Rajesh Kumar Verma, CGC

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)



3 02-08-2018

This Letters Patent Appeal has been preferred for setting aside the order dated 17.07.2018 passed in Civil Writ Jurisdiction Case No. 12134 of 2018.

2. It appears that the appellants before us are the original writ petitioners who have preferred the writ application before the learned Writ Court for quashing the order dated 07.06.2018 issued under the signature of Under Secretary to the Government of India, Ministry of Ayush contained in No. A:11019/01/2018-EC/CCIM whereby and whereunder in exercise of the power conferred under Section 4 (2) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as the IMCC Act, 1970) read with Rule 25 of the Indian Medicine Central Council (Election) Rules, 1975 (hereinafter referred to as the IMCC (Election) Rules, 1975), the election of these petitioners as members of CCIM from Ayurveda, the State of Bihar has been declared null and void and a direction has been issued to conduct fresh election of four members of CCIM, Ayurveda for the State of Bihar as per the provision of IMCC Act, 1970 and IMCC (Election) Rules, 1975.

3. It appears that at the instance of the petitioners the learned Writ Court has issued notices to private respondent



nos. 6 to 8 and has directed for listing of the case immediately after receipt of the service report. By way of interim order, the learned Writ Court has directed as follows:

“It is made clear that any fresh election of four members of CCIM, Ayurveda from the State of Bihar pursuant to the declaration of the petitioners’ election on the said post to be null and void vide order dated 07.06.2018 passed by the Ministry of Ayush, Government of India shall be subject to the outcome of the present writ petition.”

4. Mr. P. K. Shahi, learned Senior Counsel representing the appellants submits that the learned Writ Court was required to stay the election itself because by allowing the fresh election to be conducted, the learned Writ Court has allowed adverse rights to crop in.

5. On the other hand, learned counsel representing the respondents submits that the Letters Patent Appeal itself is not fit to be entertained as the petitioners have moved this Court in appeal against an interim order. It is argued that if at all the petitioners are looking for modification of the order dated 17.07.2018, passed by the learned Writ Court, they were required to move before the learned Writ Court itself by way of an appropriate application. It is further submitted that in view of the judgment of the Hon’ble Apex Court in the case of



Midnapore Peoples' Coop. Bank Ltd. and Others Vs. Chunilal Nanda and Others reported in (2006) 5 SCC 399 the interim order in the present case will not come in the category of a 'judgment' or 'interlocutory' or 'intermediary judgment' against which a Letters Patent Appeal would lie.

6. In the case of **Midnapore Peoples' Coop. Bank Ltd.** (Supra) the Hon'ble Apex Court has taken note of the judgment of the Apex Court in the cases of **Central Mine Planing and Design Institute Ltd.** (Supra), **Mithailal Dalsangar Singh and Others Versus Annabai Devram Kini And Others** reported in (2003) 10 Supreme Court Cases 691 and **Subal Paul Versus Malina Paul and Another** reported in (2003) 10 Supreme Court Cases 361.

7. In the case of **Central Mine Planing and Design Institute Ltd. Versus Union of India and Another** reported in (2001) 2 Supreme Court Cases 588 Clause 10 of the Letters Patent of Patna High Court came to be considered before the Hon'ble Apex Court in which the following observations were made:

“It is now well settled that the definition of “judgment” in Section 2(9) of the Code of Civil Procedure has no application to Letters Patent.....” It follows that to determine the question



whether an interlocutory order passed by one Judge of a High Court falls within the meaning of “judgment” for purposes of Letters Patent the test is: Whether the order is a final determination affecting vital and valuable rights and obligations of the parties concerned. This has to be ascertained on the facts of each case.”

8. In the later case, while finding that Clause 10 of the Letters Patent of the Patna High Court is corresponding to Clause 15 of the Letters Patent of the Calcutta High Court, the Hon’ble Apex Court held :-

“While determining the question as regards clause 15 of the Letters Patent, the court is required to see as to whether the order sought to be appealed against is a judgment within the meaning thereof or not. Once it is held that irrespective of the nature of the order, meaning thereby whether interlocutory or final, a judgment has been rendered, clause 15 of the Letters Patent would be attracted. Clause 15 of the Letters Patent confers a right of appeal on a litigant against any judgment passed under any Act unless the same is expressly excluded. Clause 15 may be subject to an Act but



when it is not so subject to the special provision the power and jurisdiction of the High Court under clause 15 to entertain any appeal from a judgment would be effective.”

8. In paragraphs 15 & 16 of the judgment in the case of **Midnapore Peoples’ Coop. Bank Ltd.** (Supra) the Hon’ble Apex Court held as follows:-

“15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.



(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term “judgment” occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are therefore, “judgments” for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not “judgments”



for the purpose of filing appeals
provided under the Letters
patent.”

9. In the present case, since the interim order passed
by the learned Writ Court does not fall in any of the categories
(i) to (iii), this Letters Patent Appeal is dismissed in limine
with liberty to the appellants to move before the learned Writ
Court, if so advised, by filing appropriate application in
accordance with law.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

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