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

+ LPA 166/2018, C.M. APPL.12444-12446/2018

UNION OF INDIA Appellant

Through : Sh. T.P. Singh, Advocate.

versus

DR V K PRAJAPATI Respondent

Through Sh. T. Singhdev, Ms. Amandeep Kaur, Ms. Bichelle Biakthansangi, Ms. Puja Sarkar, Sh. Tarun Verma and Sh. Abhijit Chakravarty, Advocates, for DCI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **03.04.2018**

1. The Union of India (UOI) is aggrieved by the order of the learned Single Judge who rejected its contention that by virtue of Section 3(e) of the *Dentists Act, 1948* [hereafter “the 1948 Act”] nominations by the administrations of the States and the Union Territories were to be notified by it.

2. According to the UOI, this precondition, though not expressly stated, is essential as the nominees are to perform duties and discharge functions of a regulatory character under the Central statute and consequently their names and antecedents have to be cleared from a vigilance angle. The learned Single Judge had rejected this contention firstly upon a plain reading of Sections 3(e) and 3(f) of the 1948 Act which enables the Central Government to nominate six members to the Council, whose nominations are valid as long as the Central Government chooses to continue with them. Learned Single Judge also relied upon a previous Division Bench ruling of the Court in *Dr. H.R. Prem Sachdeva and Ors. v. UOI and Ors.* 1995 (3) AD (Del) 1061. The UOI relies upon Section 3 of the 1948 Act and contends that the findings of the learned Single Judge are erroneous and relies upon its submissions.

3. The relevant provisions of the 1948 Act, i.e. Sections 3 and 6 read as follows:

*“3. **Constitution and composition of council.**—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 [State] register;

(b) one member elected from amongst themselves by the members of the Medical Council of India;

(c) not more than four members elected from among themselves, by—

(a) Principals, Deans, Directors and Vice-Principals of dental colleges in the States training students for recognised dental qualifications:

Provided that not more than one member shall be elected from the same dental college;

(b) Heads of dental wings of medical colleges in the States training students for recognised dental qualifications;

(d) one member from each University established by law in the States which grants a recognised dental qualification, to be elected by the members of the Senate of the University, or in case the University has no Senate, by the members of the court, from amongst the members of the Dental Faculty of the University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof;

(e) one member to represent [each State] nominated by the Government of each such State from among persons registered either in a medical register or a dental register of the State;

[Explanation.—In this clause, “State” does not include a Union territory;]

(f) six members nominated by the Central Government, of whom at least one shall be a registered dentist possessing a recognised dental qualification and practising or holding an appointment in an institution for the training of dentists in a [Union territory] and at least two shall be dentists registered in Part B of a [State] register;

(g) the Director General of Health Services, ex officio;

Provided that pending the preparation of registers the [State] Governments may nominate to the first Council members referred to in parts (a) and (e) and the Central Government members referred to in part (f) out of persons who are eligible for registration in the respective registers and such persons shall hold office for such period as the [State] or Central Government may, by notification in the Official Gazette, specify.”

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6. Term of office and casual vacancies.—(1) *Subject to the provisions of this section an elected or nominated member shall hold office for a term of five years from the date of his election or nomination or until his successor has been duly elected or nominated, whichever is longer:*

[Provided that a member nominated under clause (e) or clause (f) section 3, shall hold office during the pleasure of the authority nominating him.

(2) An elected or nominated member may at any time resign his membership by writing under his hand addressed to the President and the seat of such member shall thereupon become vacant.

(3) An elected or nominated member shall be deemed to have vacated his seat if he is absent without excuse, sufficient in the opinion of the Council, from three consecutive ordinary meetings of the Council or, in the case of a member whose name is required to be included in a [State] register, if his name is removed from such register, or if he has been elected under clause (c) of section 3 [if he ceases to hold his appointment as the [Principal, Dean, Director or Vice-Principal] of a dental college, or as [the Head Head of the dental wing] of a medical college, or if he has been elected under clause (b) or (d) of section 3, if he ceases to be a member of the Medical Council of India or [the Dental or Medical Faculty] of the University, as the case may be.

(4) A casual vacancy in the Council shall be filled by fresh election or nomination, as the case may be, and the person elected or nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was elected or nominated.

(5) Members of the Council shall be eligible for re-election or re-nomination.

(6) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.”

4. The learned Single Judge relied upon *Dr. H.R. Prem Sachdeva (supra)* where the Division Bench ruled categorically that issuance of a Gazette Notification by the Central Government was not essential under the 1948 Act.

5. In view of this decision, the Court is of the opinion that there is no infirmity with the impugned judgment. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 03, 2018/ajk