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

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Judgment delivered on: 20.01.2020

+ W.P.(C) 630/2020

DR. VINAY AGGARWAL AND ANR. Petitioners

versus

GOVERNMENT OF NCT OF DELHI AND ORS.
Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Jayant Mehta, Mr. Atul Sharma, Mr. Nitesh Jain
and Ms. Shruti Pandey, Advocates.

For the Respondent: Mr. V.K. Garg, Senior Advocate with Mr. Praveen
Khattar, Mr. Praveen Garg and Mr. Ramesh Tiwari,
Advocates for R-2 & 3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 1766/2020 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 630/2020 & CM APPL. 1767/2020

1. Learned counsel for the petitioner submits that on account of an inadvertent error, respondent No.3 has been arrayed by name though he has been impleaded as holding the post of Registrar, Delhi Medical

Council. He accordingly seeks leave to amend the memo of parties. The leave is granted. Amended memo of parties be filed within two days.

2. Petitioners seeks quashing of election notification dated 06/07.01.2020 calling for nominations for the election of members of the Delhi Medical Council.

3. Petitioners are members of Delhi Medical Council. As per the petitioner the elections of the members for the present Delhi Medical Council were notified in October-November, 2014 in terms of the Delhi Medical Council Act, 1997 (hereinafter referred to as the Act).

4. As per the petitioners, in terms of Section 4 of the Act, the term of 5 year of the Delhi Medical Council commences from the date the notification of the election/nomination of the members is published by respondent No.1.

5. It is contended that in March, 2015 the list which was proposed to be notified by the respondents did not contain the name of petitioner No. 1 and accordingly petitioner No. 1 filed a writ petition being W.P(C) No.2353/2015 titled “Dr.Vinay Aggarwal and Anr vs. Government of NCT of Delhi”.

6. It is contended that during the course of hearing in the said writ petition on 19.03.2015, a notification dated 13.03.2015 was produced before the Court, which did not contain the name of the petitioner. It

was contended by the counsel appearing for the Government of NCT of Delhi that notification had not yet been published in the official gazette.

7. Petitioner No. 1 was nominated by the Lieutenant Governor to the Delhi Medical Council in terms of Section 3(3)(a) of the Act. Subsequently, respondents issued a notification dated 28.09.2015 including the name of the petitioner to the Delhi Medical Council.

8. Petitioner No. 2 is an elected member of the Delhi Medical Council elected in the year 2015 in terms of Section 3(3)(c) of the Act.

9. By the impugned notification dated 06/07.01.2020, the respondents have notified that election of 8 members to the Delhi Medical Council has to be conducted and accordingly invited nominations. It is this notification that the petitioners impugn.

10. It is contended by learned counsel for the petitioners that since the notification nominating petitioner No. 1 was published only on 28.09.2015 and petitioner No. 1 was taken in as a member of the Council in December, 2015, the term of the petitioners could not be truncated and petitioners should continue till the Delhi Medical Council started functioning on 08.12.2015.

11. It is further contended by learned counsel for the petitioners that the notification dated 13.03.2015 was never published in the official

gazette and as such the impugned notification dated 06/07.01.2020 seeking to truncate the term of the Delhi Medical Council is invalid. Learned counsel relies on the statement of the counsel appearing for the Government of NCT of Delhi made on 19.03.2015 in W.P(C) No.2353/2015 wherein it is stated that the notification dated 13.03.2015 was taken out for publication but has not been published in the official gazette.

12. Learned senior counsel appearing for respondent Nos.2 & 3 on advance notice contends that the impugned notification dated 06/07.01.2020 has been issued for election of the 8 council members in terms of Section 3(3)(c) of the Act and Petitioner No. 1 has no locus standi to even impugn the said notification.

13. Further it is contended that the notification dated 13.03.2015 was duly published in the official gazette and even petitioner has placed on record a copy of the official gazette wherein the said notification has been issued.

14. Further it is contended by learned senior counsel for the respondent that the notification dated 28.09.2015 wherein petitioner's name was included only amended the notification dated 13.03.2015 and accordingly would relate back to the date of the original notification. He further points out that the notification itself specifies that the term of office of petitioner No. 1 is for the remaining period and not for a fresh period of five years from the date of the said

notification.

15. Section 3(3) of the Act reads as under:-

“(3) The Council shall consist of the following members, namely:-

(a) four members having registrable qualification as prescribed in the Indian Medical Council Act, 1956 (202 of 1956) to be nominated by the Government;

(b) one member from each medical college established by law in Delhi having a medical faculty, elected by members of the medical faculty of that college from amongst its permanent members of teaching faculty;

(c) nine members to be elected by registered practitioners from amongst themselves including one member elected by the Delhi Medical Association:

Provided that no registered practitioner shall be entitled to vote or stand as a candidate for election, unless:

(i) he is a citizen of India; and

(ii) he either resides or carries on his profession or is employed in Delhi;

(d) Dean of the Medical Faculty of the University of Delhi as ex-officio member; and

(e) Director of Health Services of the Government as ex-officio member.”

16. In terms of Section 3(3) of the Act, there are five categories of members of the Medical Council. Four members are to be nominated

by the Government in terms of Section 3(3)(a) of the Act; one member from each medical college established by law in terms of Section 3(3)(b) of the Act; nine members to be elected by registered practitioners from amongst themselves including one member elected by Delhi Medical Council (i.e. 8 elected by registered practitioners and one elected by Delhi Medical Association) in terms of Section 3(3)(c) of the Act; Dean of the medical faculty of the University of Delhi in terms of Section 3(3)(d) of the Act and Director of Health Services of the Government are ex-officio members in terms of Section 3(3)(e) of the Act.

17. Petitioner No. 1 is a member in terms of Section 3(3)(a) of the Act i.e. nominated by the Government.

18. The impugned notification is for election of the eight members to be elected by the registered practitioners from amongst themselves in terms of Section 3(3)(c) of the Act.

19. Section 4 of the Act reads as under:-

***Term of office.** - (1) The Government, shall, by notification in the Official Gazette, publish the names of the members.*

(2) Save as otherwise provided by this Act, a member, shall hold office for a term of five years from the date of publication of the notification under sub-section (1):

Provided that where a person is elected by members of medical faculty of a medical college, or is an ex-

officio member, he shall cease to hold office as a member if he ceases to belong to that faculty or, as the case may be, ceases to hold such office, before the expiry of his term.

(3) Save as otherwise provided by this Act, the President or the Vice-President shall hold office from the date of his election upto the day on which his term of office as member expires.

(4) The term of office of an outgoing member shall, notwithstanding anything contained in sub-section (2) be deemed to extend and to expire with the day immediately preceding the day on which the names of the successor members are published under sub-section (1).

(5) The term of office of an outgoing President or Vice-President shall, notwithstanding anything contained in sub-section (3), be deemed to extend and to expire with the day immediately preceding the day on which the successor President or Vice-President, as the case may be, is elected.

(6) An outgoing member, President or Vice-President, shall be eligible for re-election or re-nomination for one more consecutive term only.

(7) Leave of absence may be granted by the Council to any member for a period not exceeding six months.

20. In terms of Section 4(1) of the Act, Government has to notify, in the official gazette, names of the members of the Delhi Medical Council. The members of the Delhi Medical Council hold office for a term of five years from the date of publication of the notification

under sub Section (1).

21. Though the contention of learned counsel for the petitioners is that the notification dated 13.03.2015 was never published in official gazette, petitioners have placed on record a copy of the official gazette no.31 dated Delhi, Friday, March 13, 2015 published in Part-IV of the Delhi gazette.

22. The contention of learned counsel for the petitioners that the notification dated 13th March, 2015 was never published in the official gazette is ex facie not sustainable.

23. Merely because an Advocate appearing for the Government of NCT of Delhi in the earlier round, on 19.03.2015, made a statement that the notification was not published notified in the official gazette, is not sustainable, in view of the fact that a copy of the official gazette has been produced by the petitioners in these proceedings, which clearly shows that notification dated 13.03.2015 has been published in the official gazette.

24. Further the notification dated 28.09.2015 based on which the petitioner No. 1 claims himself to be a member of the Delhi Medical Council, itself refers to the notification dated 13.03.2015. Notification dated 28.09.2015 notifying the name of petitioner No. 1 seeks to only amend the earlier notification dated 13.03.2015. The amendment would relate back to the original date of the notification.

25. The notification of the name of petitioner No. 1 dated 28.09.2015 also specifies as under:-

“Subject to provisions of the aforesaid Act, the terms of office of the above members shall be for the remaining period from the date of publication of this Notification.”

26. The notification itself clarifies that the term of office of petitioner No. 1 is for the remaining period. Petitioner No. 1 clearly would not get a fresh period of five years from the date of publication of the said notification.

27. Though the notification uses the expression “*subject to provisions of the Act*”, it would not give a fresh term of five years to the petitioner because the said notification was an amendment to the earlier notification dated 13.03.2015 and further qualifies that the term of office of the petitioner No. 1 is for the remaining period.

28. Furthermore, it may be noticed that the impugned notification dated 06/07.01.2020 is for the election of the eight members in a category distinct from the category in which the petitioner No. 1 falls. Petitioner No. 1 is a nominated member nominated by the Government and is not one of the elected members of the Delhi Medical Council. Petitioner No. 1 cannot seek to impugn a notification whereby the fresh election of the elected members is to take place since petitioner No. 1 does not fall in the said category.

29. Further, the contention that the impugned notification is

premature as the Delhi Medical Council did not start functioning till December, 2015 and accordingly the members would continue till December 2020, is also not sustainable because, clearly the notification of the council was published on 13.03.2015 and Section 4(2) of the Act stipulates that a member, shall hold office for a term of five years from the date of publication of the notification under sub-section (1) of the Act.

30. I find no infirmity in the action of respondent No.3 in issuing a notification calling for nominations for election to be held in terms of Section 3(3)(c) of the Act.

31. There is no merit in the petition. The Petition is, accordingly, dismissed.

32. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

JANUARY 20, 2020

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