

21.09.2022.
Court No.25
Item No. 8
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W.P.A. No. 13684 of 2018
With
I.A. No. CAN 2 of 2022

Dr. Baijyaanti Baur & Ors.
Versus
The State of West Bengal & Ors.

Mr. Kallol Basu,
Mr. Suman Banerjee.

...For the petitioners.

Mr. Sirsanya Bandopadhyay, Jr. Standing Counsel
Mr. Arka Kumar Nag.

...For the State.

Mr. Saibalendu Bhowmik,
Mr. Biplab Guha,
Mr. Subrata Bhattacharyay.

...For the WBMC.

Five Doctors registered with the West Bengal Medical Council have joined together to file the instant writ petition, inter alia, praying for the following reliefs:

“(b) A writ of and/or in the nature of Mandamus directing and/or commanding the respondent authorities concerned, particularly the respondent no.4 to set aside and/or cancel and/or withdraw and/or rescind the purported electoral roll and the election process initiated on the basis thereof;

(c) A writ of and/or in the nature of Mandamus directing and/or commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to publish the Final Electoral Roll after considering the objection of the petitioners and any other and deleting the names of ineligible voters from the electoral roll;

(d) A writ of and/or in the nature of Mandamus directing and/or commanding the respondent authorities concerned and/or their men, servants, agents and/or assigns to conduct the election of West Bengal Medical Council 2018 under the supervision and control of impartial observer appointed by this Hon'ble Court, in an online mode if deemed necessary, so as to ensure free and fair election;”

The writ petition was filed challenging the action of the Returning Officer i.e. the respondent no.4 herein in the matter of conducting the general election for constitution of the Medical Council which commenced sometime in the year 2018 in violation of the relevant Rules framed under Section 33 of the Bengal Medical Act, 1914 (in short “1914 Act”).

Mr. Basu, Learned advocate appearing for the petitioners drew the attention of the Court to the orders dated August 2, 2018 and August 16, 2018 passed in this writ petition to highlight the prima facie observations made by a Co-ordinate Bench of this Court while passing the said orders that the respondent no.4 has failed to act in strict consonance with the statutory provisions.

Mr. Basu further submits that in the meantime, a Co-ordinate Bench of this Court by a judgment and order dated June 29, 2022 in W.P.A. No. 8140 of 2022 directed appointment of an ad hoc Council for the limited purpose of conducting the next Election of

Council. He also submits that though the Co-ordinate Bench of this Court directed holding of the elections by the ad hoc Council but the same is silent as to the manner in which such election has to be conducted.

By placing several provisions more particularly Rules 6 and 7 of the relevant Rules, Mr. Basu contended that a direction is to be passed by this Court for holding the election upon strict compliance of the Statutory Rules. He further submits that in view of the serious allegations leveled against the respondent no.4 which weighed with the Co-ordinate Bench of this Court for passing the interim order on August 16, 2018, an Observer is to be appointed for the purpose of ensuring free and fair election.

Mr. Bhowmik, Learned advocate assisted by Mr. Guha appears for the respondent no.4 and submits that since a Co-ordinate Bench of this Court has already passed a judgment in W.P.A. No. 8140 of 2022 for holding the election in a specified manner, this Court should refrain from passing any direction on the payer of the present writ petitioners as the same may be in conflict with the decision of a Co-ordinate Bench of this Court in W.P.A. No. 8140 of 2022 as well as the orders passed in Public Interest Litigation being W.P.A. (P) No. 416 of 2022 and M.A.T. No. 1497 of 2022. Mr. Bhowmik further submits that the prayer for appointment of an observer, made by Mr. Basu,

should not be entertained as the Hon'ble Division Bench by an order passed in M.A.T. No. 1497 of 2022 has rejected the prayer for appointment of an Observer at the instance of the one of the Doctors registered with the West Bengal Medical Council, who has also expressed his concern for free and fair election to the said Council.

Mr. Nag, Learned advocate appearing for the State submits that the allegations in this writ petition are leveled against the respondent no.4 and as such, the State refrains from entering into the disputes between the writ petitioners and the respondent no.4.

Heard the Learned Advocates appearing for the parties and perused the materials placed on record.

It appears from the judgment and order dated June 29, 2022 passed in W.P.A. No. 8140 of 2022 that a Co-ordinate Bench of this Court directed the State of West Bengal to appoint an ad hoc Council adhering to the relevant provisions of 1914 Act and to conduct and conclude the election process including declaration of result within the time limit specified in the said judgment and order. The portion of the said order, which would be relevant for the purpose of deciding this writ petition, is extracted hereinbelow:

“56. Respondent no.2, that is, the State of West Bengal, shall appoint an ad hoc council, adhering to the relevant provisions of the Bengal Medical Act, 1914 (as amended till date) in that regard,

for the limited purpose of conducting the next elections of the Council and carrying out the essential functions of the Council, within July 31, 2022. The said ad hoc body will start functioning on and from August 1, 2022.

“57. Till July 31, 2022, the present council shall exercise only the essential day-to-day financial and other activities of the West Bengal Medical Council, but shall not dispose of, transfer and/or encumber any asset of the council and/or assets over which it has powers of disposal statutorily. There will be no new registration and/or cancellation of registration of any registered medical practitioner by the present council till it stands dissolved. The present council shall not, till dissolution, take major or policy decisions in any matter vested in law with the council.

58. The elections of the West Bengal Medical Council, as contemplated in Section 4 of the Bengal Medical Act, 1914 (as amended till date), shall thereafter be conducted in accordance with law by the ad hoc Council, under the aegis of the Respondent no.2-State, as expeditiously as possible. Keeping in view the volume of work involved, the outer limit for concluding such election process, including declaration of results, is fixed at October 31, 2022.

59. Respondent no.2 shall complete the process of nomination of members as envisaged in Section 4 of the 1914 Act and ensure that appropriate steps in terms of the 1914 act are taken so that the formalization and all necessary paraphernalia regarding the constitution of the

new, duly-elected Medical Council are completed latest by October 31, 2022.

60. Due notifications will be made and steps taken for adherence to the above time-frame, so that the newly-elected council can start functioning effectively on and from November 1, 2022.

61. This Court does not intend to go so far as to intrude into the statutorily delineated domain of the Executive for the time being, but it is expected that the Respondent No. 2 and the ad hoc Council constituted by it shall ensure fair play and transparency in the entire process of elections, nominations, and other formalities for constitution of the new Council, as directed above and, prior to that, in appointing the ad hoc Council.

62. It will, however, be open to all aggrieved parties/stakeholders to challenge any illegality and/or irregularity in the ensuing appointment of ad hoc Council and/or conduct of the West Bengal Medical Council elections before the appropriate forum.”

By the said order, the respondent no.2 i.e. the State of West Bengal was directed to appoint an ad hoc Council and also to complete the process of nomination of members as envisaged in Section 4 of 1914 Act and ensure that appropriate steps in terms of 1914 Act are taken so that the formalization and all necessary paraphernalia regarding the constitution of

the new, duly-elected Medical Council are completed latest by October 31, 2022.

The Co-ordinate Bench also expressed the hope that the respondent no.2 and the ad hoc Council constituted by it shall ensure fair play and transparency in the entire process of elections, nominations, and other formalities for constitution of the new Council.

After going through the said order, this Court is of the considered view that the apprehension of the writ petitioners ventilated through their learned Advocate before this Court that the election process may not be conducted in a fair and transparent manner is without any basis as the Co-ordinate Bench in the said judgment observed that the State of West Bengal and ad hoc Council shall ensure fair play and transparency in the entire process of election.

Now this Court has to consider the prayer of the writ petitioners for appointment of an Observer for the purpose of supervision over the election process conducted by the ad hoc Council.

In this regard, reference may be made to the order dated September 20, 2022 passed in M.A.T. No. 1497 of 2022 with CAN 1 of 2022 wherein the Hon'ble Division Bench was pleased to make the following observations:

“7. In view of the aforesaid, we are of the opinion that the installation of CCTV cameras at the appropriate place and appointment of observer will facilitate the transparent and fair election process. The representation of the respondent no.1 in this regard is already pending before the ad-hoc Committee. Appellant is also permitted to file the representation in this regard within 24 hours. The ad-hoc Committee is directed to take decision on these representations within 48 hours from now keeping in view the observations which are already made above.”

Therefore, the Hon’ble Division Bench thought fit to leave the issue regarding appointment of an observer to be considered by the ad hoc Committee.

In view thereof, this Court does not find any necessity to pass any direction for appointment of an Observer in this writ petition.

The writ petition accordingly stands disposed of with the aforesaid observations.

In view of the disposal of the main writ petition, the connected application being CAN 2 of 2022 is also disposed of.

There shall be, however, no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

