

August 31, 2022
S.L. Item No. 1
Court No.1
PA(RB)

WPA (P) 416 of 2022

Dr. Kunal Saha

vs.

The State of West Bengal and Anr.

Mr. Kunal Saha

... petitioner-in-person

Mr. S.N. Mookherjee, Ld. AG

Mr. Anirban Rah, Ld. GP

Mr. Suman Sengupta

Mr. Saikat Chatterjee, Advocates

... for the State

Mr. Saibalendu Bhowmik,

Mr. Biplab Guha,

Mr. Rajsekhar Basu, Advocates

... for the respondent no. 2

By this public interest petition, the petitioner, who is a medical doctor registered with the respondent no. 2, has prayed for a writ of mandamus against the respondent no. 1 to take necessary steps to selected/re-selected Ad hoc Council Members in accordance with Section 5 of the West Bengal Medical (Temporary Suppression) Act, 1985 (for short, 'the Act of 1985').

The plea raised in the petition is that West Bengal Medical Council was being run by an Ad hoc Committee without holding due elections, therefore, earlier PIL being WP 8971(W) of 2012 was filed wherein the order dated 16th of January, 2013 was passed directing to hold the election. According to the petitioner, the Members of the WBMC elected in 2018 continued to run the Medical Council without holding any election even after expiry of

the term of 5 years, therefore, another writ petition being WPO 382 of 2018 (renumbered later as WPA 8140 of 2022) was filed wherein learned Single Judge has passed the order dated 29th of June, 2022 dissolving the WBMC and directing appointment of Ad hoc Council for the purpose of conducting elections of the Council and to carry out the essential functions. The petitioner is aggrieved with the constitution of the Ad hoc Committee.

Submission of the petitioner-in-person is that in terms of Section 5 of the Act of 1985, as many as 20 members are required in the Ad hoc Committee but vide notification dated 28th of July, 2022, Ad hoc Committee of 8 members has been formed and that the Members of the Ad hoc Committee should not be allowed to contest the election. A grievance has been raised against the member no. 1 and 2 of the Ad hoc Committee.

Learned Advocate General opposing the petition has pointed out that Section 5 of the Act of 1985 has subsequently being amended and that Members of the Committee have not been made a party and once the election process commences, interference of the Court is not required.

We have heard the learned counsel for the parties and perused the record. The petitioner is placing reliance upon Section 5 of the West Bengal Medical Council (Temporary Suppression) Act, 1985 but learned Advocate General has produced the notification dated 17th of May,

2012 containing the West Bengal Medical Council (Temporary Suppression) (Amendment) Act, 2012. A perusal thereof indicates that the principal Section 5 of the Act of 1985 has been omitted and the new Section 5A has been inserted providing for reconstitution of the Ad hoc Council consisting of not more than 10 persons as its members. Hence, very basis of challenge raised in the writ petition by the petitioner has been wiped off by the subsequent amendment.

That apart, nothing has been pointed out by the petitioner to show as to why the members of the Ad hoc Committee should not be permitted to contest the election if they fulfill the eligibility conditions prescribed in Section 6 of the Bengal Medical Act, 1914.

It is also worth noting that the petitioner has produced the newspaper cutting disclosing that the elections to the Medical Council have already been notified and the nominations are to be submitted between September 2, 2022 to September 6, 2022 and sending of the voting papers will start from September 19, 2022 and last date of receipt of ballot papers in the Council's Office is October 18, 2022 and scrutiny and counting will be on October 19, 2022.

Hon'ble Supreme Court in the matter of **Supreme Court Bar Association and Others vs. B.D. Kaushik** reported in **(2011) 13 SCC 774**, while considering the issue of interim injunction against the elections of SCBA

has held that once the election process has started, Court should not ordinarily interfere therewith by granting injunction as the same has very wide repercussion.

In the matter of **Shaji K. Joseph vs. V. Vishwanath and Others** reported in **(2016) 4 SCC 429**, Hon'ble Supreme Court while considering the issue of election of the Member of Dental Council of India, has opined that whenever the process of selection starts, normally the Court should not interfere with the process of election for simple reason that if process of election is interfered with by the Courts, possibly no election would be completed without the Court's order.

Having regard to the above factual and legal position, we find no reason to interfere in the present public interest petition which is accordingly dismissed.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]