

OD 12

ORDER SHEET
WPO/382/2018
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

DR. KUNAL SAHA
VERSUS
THE WEST BENGAL MEDICAL COUNCIL & ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 25th April, 2022.

Appearance:
Dr. Kunal Saha
Petitioner-in-Person.

Mr. Saibalendu Bhowmick, Adv.
Mr. Rajsekhar Basu, Adv.
Mr. Biplab Guha, Adv.
For the W.B.M.C.

Mr. Anirban Ray, Adv.
Learned Government Pleader, W.B.
Mr. Debashis Ghosh, Adv.
Mr. Paritosh Sinha, Adv.
Learned AOR, WB.
Mr. Arindam Mandal, Adv.
For the State.

The Court: At the outset, learned counsel appearing for the Medical Council submits that they did not have notice that this matter has been assigned to this Court and appearing in the list, although the petitioner, appearing in person with the leave of Court, files a receipt of notice which was served on the West Bengal Medical Council itself pursuant to the previous direction of this Court.

Moreover, learned counsel appearing for the Medical Council take a preliminary objection as regards the maintainability of the writ petition in the Original Side as well as the locus standi of the petitioner to move the writ petition.

It is submitted that since the office of none of the respondents is within the Original Side territorial jurisdiction of this Court, the matter ought to be heard in the Appellate Side.

As regards locus standi, learned counsel for the Medical Council contends that the petitioner is not a citizen of India and, as such, cannot invoke any provision of law for seeking relief before this Court.

It is further argued that the petitioner has no personal cause of action for preferring the instant writ petition, which has not been framed in the form of public interest litigation.

As such, a dismissal of the writ petition at the outset is prayed for on the ground of maintainability.

In so far as the citizenship of the petitioner, who is a Non-Resident Indian (NRI) is concerned, the Constitution, in most of its articles, barring a few exceptions, is not restricted to the rights of the citizens of India only, but can be invoked at the instance of any person for the time being on Indian soil.

Thus, such fact, *ipso facto*, cannot be a deterrent to the Court looking into the allegations raised in the writ petition.

That apart, it is evident from the order dated July 23, 2018 passed by a co-ordinate Bench in WP No. 12500 (W) of 2018, that a similar objection as to locus standi of the petitioner was raised on behalf of the Medical Council itself, but the same was turned down by the learned Single Judge, *inter alia*, on the premise that the petitioner's name was incorporated in the final electoral roll under clause (h) of Section 4(1) of the Bengal Medical Act, 1914.

In so far as personal cause of action is concerned, since the petitioner is a registered medical practitioner under the West Bengal Medical Council itself, it is well within the locus standi of the petitioner to bring allegations regarding irregularities being perpetrated in respect of the election of the said council.

Hence, the objection on the ground of locus standi is turned down.

However, the objection as regards the matter not pertaining to the Original Side of this Court is upheld in view of the Original Side Rules, in particular Rule 4. The file be sent to the Department for re-classification and re-allotment of a number in the Appellate Side of this Court. Such exercise shall be completed within a week from date.

The matter shall next be enlisted under the same heading on
May 3, 2022 at 2:00 p.m.

(SABYASACHI BHATTACHARYYA, J.)